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PRECEDENTS,

OR

PRACTICAL FORMS IN ACTIONS AT LAW

IN THE

SUPREME COURT OF THE STATE OF N. YORK,

ADAPTED TO THE

CODE AND RULES OF 1852;

WITH THE

FORMS IN PROCEEDINGS AGAINST SHIPS & VESSELS; PARTITION OF INFANTS' ESTATE; SALE OF INFANTS' ESTATE; ADMEASUREMENT OF DOWER; FORECLOSURE BY ADVERTISEMENT; DETERMINATION OF CLAIMS TO REAL ESTATE AND APPEALS FROM SURROGATES' COURTS.

BY H. S. McCALL,
COUNSELLOR AT LAW.

ALBANY:
GOULD, BANKS & CO., 475 BROADWAY.
NEW YORK:
BANKS, GOULD & CO., 144 NASSAU STREET.
1852.

Entered according to Act of Congress, in the year one thousand eight hundred and fifty-two,

BY GOULD, BANKS & CO.,

In the Clerk's Office of the District Court of the Northern District of New York.

H. H. VAN DYCK, LAW PRINTER, ALBANY.

TO

THE HON. IRA HARRIS, LL. D.

AS A

TESTIMONY OF RESPECT FOR HIS TALENTS,

AND AN

ACKNOWLEDGMENT OF THE GREAT OBLIGATIONS

WHICH HIS KINDNESS AND FRIENDSHIP

HAVE CONFERRED ON THE YOUNGER MEMBERS

OF OUR PROFESSION,

THIS WORK

IS MOST RESPECTFULLY

INSCRIBED

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PREFACE.

The numerous works upon Practice and Pleadings which have been published since the passage of the Code in 1848, would seem, at first view, to more than satisfy the demands of the profession, and forbid the hope that any new work upon the subject could obtain the public favor. But when one reflects, how changing our practice has been, it will immediately occur to him, that all such works must be ephemeral in their nature, and that those first published must have become in many respects obsolete, and in others destitute of much of that information which the practitioner needs.

The system of practice which the Code abolished was the growth of years; many of its rules and precedents had existed for over a century, and the Statute which abolished the forms of all actions and suits then existing, deprived the practitioners of those sure and safe guides by which they had been accustomed to conduct their proceedings. To rebuild a system complete in all its parts cannot be the work of a day. Years must be spent and many minds employed before it will become one consistent, perfect whole. But that such a system will be perfected in our State no

one can doubt who is accquainted with the labor, energy, and perseverence of the members of the legal profession. Minds schooled in our former system of practice never will be satisfied with the present, till it has acquired all the improvement that learning and talents can give.

Learned and extensive disquisitions upon the theory and practice of our Courts never have and never will fully satisfy the demands of the profession. The experience of every legal practitioner bears witness to the convenience of having at hand a work of approved precedents in all the more common forms of pleadings and process which are in daily use.

To provide a set of forms for every emergency would be impossible. To provide those which are in constant use in the hands of every practitioner, is the design of the present work; and it is believed that most, if not all of them, will be found in the following pages.

In addition to the forms in ordinary actions, precedents have been added in the more common of the various special proceedings, believing that they would not be unacceptable to great numbers of the profession.

Albany, August, 1852.

PRACTICAL FORMS.

[No. 1.]

Acknowledgment of undertaking.

(City and) County of Albany, ss: On this day of personally came before me the within named A. B. and C. D., to me known to be the persons described in and who executed the within (or foregoing) undertaking, and severally acknowledged the execution thereof.

E. F.,
Commissioner of Deeds.

[No. 2.]

Justification of sureties in an undertaking.

(City and) County of Albany, ss: A. B., of the city of Albany, and C. D., of the same place, being each duly sworn, does each for himself severally say that he is a resident and freeholder (or householder) within this State, and is worth the sum of hundred dollars, over and above all debts and responsibilities he owes or has incurred.

A. B.
C. D.

Severally sworn before me
this day of 1851.
G. H., Com. of Deeds.

[No. 3.]

Proof of service of summons and complaint.

(City and) County of Albany, ss: A. B., of the city of Albany, being sworn, says that on the fourteenth instant he served the within summons and complaint in the town of Bethlehem, on the within named C. D., to him known to be the person mentioned and described in the summons, as defendant therein; and that he left with the defendant such copy as well as delivered it to him.

A. B.

Sworn, &c.

[No. 4.]

Affidavit to complaint, answer or reply.

(City and) County of Albany, ss: A. B., the plaintiff, (or one of the plaintiffs,) or (the defendants, or one of the defendants,) being sworn, says, the foregoing complaint (or answer, or reply,) is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

A. B.

Sworn, &c.

[No. 5.]

Affidavit to petition.

(City and) County of Albany, ss: On this day of before me personally came A. B., to me known to be the person described in, and who signed the foregoing petition; who, being by me sworn, did say, that he has read (or heard read) the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true of his

own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters, he believes it to be true.

C. D.,
Com. of Deeds.

[No. 6.]

Affidavit of service of notice of motion.

County of Columbia, ss: A. B., of the town of Kinderhook, in said county, being duly sworn, says, that on the day of instant, this deponent served upon C. D., Esq., attorney for the within named plaintiff, (or defendant,) copies of the within affidavits, and a notice of motion, of which the within is a copy, by delivering the same to him personally, (or by leaving the same in the office of the said C. D., with a person having charge thereof; or by leaving the same in the office of the said C. D., between the hours of six in the morning and nine in the evening, in a conspicuous place in the office of the said C. D., there being no person therein; or by putting the same in the post office at Kinderhook, properly enclosed in an envelope, directed to the said C. D. at Albany, his residence, and paying the postage thereon.)

A. B.

Sworn, &c.

[No. 7.]

Affidavit to attach sheriff for not returning execution.

Supreme Court.

A. B. }
agt. }
C. D. }

(City and) County of Albany, ss: G. H. being sworn, says, he is attorney for plaintiffs in this action; that the judgment roll was filed in the clerk's office, in Albany

county, on the day of , 1850, for five hundred dollars damages and costs, and execution in due form duly issued therefor on the day of 1850, and received by the sheriff of the said county of Albany on the day of , 1850; that deponent has enquired at the Albany county clerk's office for said execution, and the same has not been returned, as therein commanded and directed, although sufficient time has elapsed therefor; nor has anything been paid thereon to the plaintiff herein, or to this deponent, and the whole judgment remains due and unpaid, and said sheriff is in default.

G. H.

Sworn, &c.

[No. 8.]

Affidavit to obtain copy papers.

(Title of action.)

New-York City and County, ss: A. B., being sworn, says, he is the defendant (or the plaintiff) in this action, and C. D., Esq., of Albany, is his attorney; that this is an action of assumpsit, founded upon an alleged contract (or whatever the subject of the action may be) made on or about the 9th day of August, 1849, between the said plaintiff and defendant; that said contract is in writing (or certain papers in writing, particularly describing them,) relating to the merits and defence (or prosecution) of this action, and in the possession of or under the control of said plaintiff, (or said defendant,) and not in the possession of or under the control of this defendant (or this plaintiff); and this deponent is advised by his counsel, and verily believes, that the discovery of the said contract in writing (or said papers) is necessary to enable this defendant to prepare his answer, (or for trial,) or (this plaintiff to prepare his complaint, or reply; or for trial in this action.)

A. B.

Sworn, &c.

[No. 9.]

Affidavit of merits.

(Title of the action.)

County of Greene, ss: G. H., the defendant, (or one of the defendants) in the above entitled action, being duly sworn, doth depose and say, that he has fully and fairly stated this case to A. B., Esquire, of the city of Hudson, defendant's counsel in this cause, and that the defendant has a good and substantial defence on the merits in this action, as he is advised by his said counsel, and verily believes.

G. H.

Sworn, &c.

[No. 10.]

Affidavit of copy account furnished.

(Title of the action.)

(City and) County of Albany, ss: G. H., the plaintiff, (or the defendant) being sworn, says, he believes the annexed to be a true copy of the plaintiff's demand (or the defendant's set off, or counter claim) in this action.

G. H.

Sworn, &c.

[No. 11.]

Affidavit to move for judgment, as in case of nonsuit.

(Title of the action.)

City and County of Albany, ss. A. B., the attorney for the defendant in this action, being duly sworn, says, that the place of trial in this action is the county of Albany; that issue was joined in this cause on the 14th day of December last past; that a circuit court was held at the City

Hall, in the city of Albany, in and for the said county, on the fifth day of July last past, and that the said plaintiff did not notice the said action for trial (or having noticed the said action for trial, did not proceed and try the same) at the said circuit court, according to the practice of this court; and that this action has not been noticed for trial by the defendant; and deponent further says, that issues of a later date were, in the regular order of the calendar, tried at the said circuit court.

A. B.

Sworn, &c.

[No. 12.]

Affidavit to move for judgment as in case of non pros.

(Title of the action.)

Onondaga County, ss: G. H., the defendant's attorney being sworn, says this action was commenced by personal service of a summons on the 12th day of November, 1850, as he is informed and believes, a copy of which is hereto annexed; that a notice of retainer and demand of a copy of complaint was served on the attorney for the plaintiff in this action, on the 20th day of the same month; and no copy complaint has been served to the knowledge or belief of deponent.

G. H.

Sworn, &c.

[No. 13.]

Affidavit to move for a commission.

(Title of the action.)

Albany City and county, ss: J. H., the plaintiff (or one of the plaintiffs) in this action, being sworn, says, that issue

was joined in this action on the 12th day of September, 1851; and he further says that he has fully and fairly stated the case in this action to A. B., Esq., his counsel, herein, who resides in said city; and has fully and fairly stated and disclosed to his said counsel the facts which he expects to prove by C. D., a witness for the plaintiffs, and deponent says that said C. D. is a material witness for the plaintiff in this action, as he is advised by his said counsel, after such statement of his case as aforesaid, and verily believes that without the benefit of the testimony of the said C. D., he cannot safely proceed to the trial of this action, as he is also advised by his said counsel, and verily believes; and deponent further says, that the said C. D. does not reside within this state, but resides in Havana, on the Island of Cuba.

J. H.

Sworn, &c.

[No. 14.]

Affidavit of agent who delivers commission.

City and County of Albany, ss: L. M., of the city of Havana, in the Island of Cuba, being sworn, says, the enclosed packet now by him delivered to P. R., Esquire, clerk of the county of Albany, to the said clerk directed, and to be by him opened, was received by this deponent on the 16th day of July last past, from the hands of O. W., of the city of Havana aforesaid, a commissioner, as this deponent is informed and believes, named in the commission in the within packet; and this deponent further says, that the said packet has not been opened or altered since he received it from the said O. W.

L. M.

Sworn, &c.

[No. 15.]

Affidavit of defendant's default.

(Title of the action.)

Essex County, ss: L. W. being sworn, says, he is the attorney for the plaintiff in this action, and that no answer or demurrer has been received in this action.

L. W.

Sworn, &c.

[No. 16.]

Affidavit of disbursements.

(Title of action.)

Essex County, ss: L. W. being sworn, says, he is the attorney for the plaintiff (or defendant) herein, and that the disbursements above mentioned have been made or incurred in this action.

L. W.

Sworn, &c.

[No. 17.]

Affidavit to obtain order to file pleadings.

(Title of the action.)

County of Greene, ss: A. B., the defendant's attorney, being sworn, says, that the summons and complaint (and reply) were served in this action more than ten days since, and that this deponent has made enquiries at the clerk's office of the county of Greene, the county in which the trial of this action is laid, and that said summons and complaint (and reply) have not been filed in said office.

A. B.

Sworn, &c.

[No. 18.]

Affidavit to put off trial on account of plaintiff's act in the premises.

(Title of the action.)

Orleans County, ss: B. F. being duly sworn, says, he is the defendant in this action, and that he has fully and fairly stated the case in this action to A. S., his counsel in this action, who resides in Medina, in said county; and that he has a good and substantial defence upon the merits thereof, as he is advised by his said counsel, and verily believes to be true. This deponent further says, that issue has been joined in this action, and that the plaintiff has noticed the same for trial at the April term of this court, to be held in the county of Orleans. This deponent further says, that since the said plaintiff noticed this action for trial, and while this deponent was preparing for the trial thereof, the said plaintiff in this action being also plaintiff in another action, in which the place of trial is the county of Albany, has subpœnaed this deponent and paid him his fees to attend the same; that said second suit is noticed for the same time as the first suit; and that owing to the sickness of deponent's counsel in the first mentioned action, it is absolutely necessary that this deponent should be present at the trial thereof, but that he will be unable to be present at the court to be held in the county of Orleans, and also obey the said summons requiring his presence in the county of Albany.

B. F.

Sworn, &c.

[No. 19.]

Affidavit to put off trial on account of witness.

(Title of the cause.)

Albany City and County, ss: G. H., the plaintiff (or defendant) in this action, being sworn, says, that issue has been

joined in this action, and the same duly noticed for trial at the present circuit, and is now on the calendar of this court for trial. And deponent further says, that since this cause was noticed for trial, L. M., one of the witnesses on the part of this plaintiff, (or defendant,) who resides at New-York, was on the 10th day of March last past, duly subpœnaed to attend the trial of this action, but that since the service of the said subpœna the said L. M. has become seriously ill, and is now wholly unable to attend this court, or be present at the trial of this action in its order on the calendar. And deponent further says, that he has stated this case, and the facts which he expects to prove by the said L. M., to D. C., his counsel in this action, who resides in the city of Albany, and that without the benefit of the testimony of the said L. M., he cannot safely proceed to trial, as he is advised by his said counsel, and verily believes. And this deponent further says, that he has been informed by R. S., the physician attending the said L. M., and verily believes, that the said witness will be able to attend this court by the time of the next term of the circuit of this court, in this county.

G. H.

Sworn, &c.

[No. 20.]

Affidavit on claim of delivery of personal property.

Erie County, ss: G. W., being sworn, says, that he is the plaintiff (or one of the plaintiffs) in an action about to be commenced, for the wrongful (taking and) detention of the property hereinafter mentioned and described, and that he, the deponent, (with S. H., are) is now the owner of the property, goods and chattels herein named and mentioned. (here describe the goods particularly, and where they are as near as may be.) That the said goods (were wrongfully taken and) are wrongfully detained from the said plaintiff,

that the alleged cause of detention is that said goods were sold to one L. M., (or whatever the cause of detention may be.)

And this deponent further says that the value of the said goods is about five hundred dollars.

And this deponent further says, that the said property has not been taken for a tax, assessment or fine, pursuant to any statute, or seized under an execution, or attachment against the property of the plaintiffs. G. W.

Sworn, &c.

[No. 21.]

Affidavit of filing notices of pendency of action in foreclosure suit.

(Title of the action.)

Albany (City and) County, ss: R. B., of the city of Albany, being sworn, says, that he is the attorney for the plaintiff in this action; that said action was commenced to foreclose a mortgage; that the summons and complaint was served on A. B., the defendant, and the summons and notice, a copy of which is hereto annexed, on all the other defendants herein on or before the seventh day of April last past, as appears by the proof of said service, and that more than twenty days since a notice of the pendency of this action, of which the annexed is a copy, was filed in the office of the clerk of Albany county, in which county said mortgaged premises are situated, which notice contained the names of the parties to this action and the object of the same; the date of the said mortgage, and the names of the persons by whom and to whom said mortgage was executed; the time when, and the office in which said mortgage was recorded; a description of the land mortgaged as set forth in said mortgage, and showing the town (and village or ward,) and county in which said mortgaged premises were situated at the time when this action was commenced.

R. B.

Sworn, &c.

[No. 22.]

Affidavit to obtain a reference in a foreclosure action.

(Title of action.)

Albany City and county, ss: R. B., the plaintiff's attorney in this action, being sworn, says, that this action was commenced to foreclose a mortgage; that none of the said defendants are absentees, and that none of said defendants have appeared in this action, except A. B. by C. D., his attorney, and G. F. by J. K., his guardian *ad litem*, that there are no infant defendants, except the said G. F. And this deponent further says, that he has made the necessary inquiries to ascertain the location of the premises described in the said mortgage, and the town (or ward and city) and county in which said premises, and every part thereof were situated at the time of the commencement of this action, and of the filing of the notice (a copy of which is hereto annexed) in the clerk's office of the county of Albany, and that the particulars stated in the notice are correctly and truly stated therein as they existed at the time of filing said notice; and that since the filing of said notice, the complaint in this action has not been amended by making a new party to the action, or so as to affect other property not described and set forth in the original complaint, or so as to extend the claims of the plaintiff against the mortgaged premises.

R. B.

Sworn, &c.

[No. 23.]

Affidavit to obtain surplus in a foreclosure action.

(Title of action.)

A. B., one of the defendants in this action, being sworn, says, this action was commenced to foreclose a mortgage; that judgment has been entered in said action, as this de-

ponent is informed and believes, and that a sale has been made of the said premises under the direction of this court, and that the claim of the plaintiff in this action has been paid, and that there remains a balance over and above the money due on said mortgage and costs of this action, which has been brought into this court subject to the order thereof. This deponent further says that he has a claim on the said surplus money, amounting to one hundred dollars; that said claim consists of a judgment obtained in this court on the seventh day of July, 1851, against L. M., then the owner in fee of the premises described in the said mortgage, which this action is brought to foreclose.

A. B.

Sworn, &c.

[No. 24.]

Affidavit of service of a judge's order.

Erie County, ss: B. A. being sworn, says, that on the fourth day of October, 1851, in the city of Buffalo, he personally served the within order upon each of the persons therein named, to wit, R. N. and S. H., by delivering to, and leaving with each, a copy of said order, and at the same time showing each the original order.

B. A.

Sworn, &c.

[No. 25.]

Affidavit to change place of trial.

(Title of action.)

Albany City and County, ss: A. B., the defendant in the above entitled action, being sworn, deposes and says, that he has fully and fairly stated to C. D., Esquire, of the city

of Albany, a counsellor of this court, and counsel for the defendant in this action, the case and the grounds of defence in this action, and that the defendant has a good and substantial defence therein upon the merits, as he is advised by the counsel above named, and believes to be true. And this deponent further says, that issue is joined in this action, and that the place of trial is laid in the county of New-York.

And this deponent further says, that he has stated to the counsel above named the facts he expects to prove by each and every one of the witnesses hereinafter named; and that L. M., J. G., H. D., and B. B., all of the city of Albany, are, (and each and every one of them is, a) material witnesses for the defendant on the trial of this action, as he is advised by the said counsel, and believes to be true; and that without the testimony of each and every one of the witnesses above named, the defendant cannot safely proceed to the trial of this action, as he is also advised by the said counsel, and verily believes to be true.

And this deponent further says, that this action is brought to recover a demand for work, labor and services (or whatever the cause may be), and the whole cause of action arose in the city and county of Albany, and not in the city of New-York, and that none of the facts at issue in this action took place in New-York, but all the said actions, if done or transpired, as stated in said complaint (and reply,) were performed in said city of Albany, and not in New-York.

And this deponent further says, that he expects to prove by (here, if advisable, state the facts to be proved by each witness.)

A. B.

Sworn, &c.

[No. 26.]

Affidavit to petition for discovery of books and papers.

Greene County, ss: S. H., the petitioner above named, being sworn, says, that he has read the above petition, by

him subscribed, and knows the contents thereof, and that the same is true, in substance and in fact, to his best knowledge and belief. And deponent further says, that the papers, whereof a discovery and production are sought by the said petition, are not in his possession nor under his control. And deponent further says, that he has fully and fairly stated this case to his counsel, A. B., who resides in the village of Athens, in said county, and that the discovery of the said paper writing is necessary to enable this deponent to prepare for the trial (or his complaint or answer,) of the issue mentioned in said petition, as he is advised by his said counsel, and verily believes.

S. H.

Sworn, &c.

[No. 27.]

Affidavit to obtain further bill of particulars.

Columbia County, ss: H. M., the attorney for the plaintiff, (or defendant) being sworn, says, that on the first day of August, inst., he caused a demand of a bill of particulars of defendant's set off (or plaintiff's demand) to be served on the defendant's or plaintiff's attorney, and that, in compliance with such demand, that a bill has been furnished, of which the annexed is a copy. (And this deponent says that a further or more particular bill is necessary for the plaintiff (or defendant) in this action.)

H. M.

Sworn, &c.

[No. 28.]

Affidavit for attachment.

(Title of action.)

Wayne County, ss: P. B., the plaintiff in this action, being sworn, says, this action is brought to recover a demand

against the defendant, for work, labor and services, (or for cash loaned, or whatever the same may be,) that the said defendant is a foreign corporation, created by and under the laws of the State of Vermont, (or that since the commencement of this action, defendant has absconded; or is about to abscond and leave this State, as this deponent is informed and believes; and that the facts set forth in the accompanying affidavits are the grounds upon which this deponent forms his belief,) (that said defendant is about to abscond.)

P. B.

Sworn, &c.

[No. 29.]

Affidavit for order to publish summons.

(Title of the action.)

Albany County, ss: L. M., the plaintiff, being sworn, says, that the summons in this action was issued some time during the month of May last past to the sheriff of the county of Oneida, the county where the above named defendant last resided, and that said sheriff has returned the same, with his certificate thereon endorsed, that he is unable to find the said defendant in his county; and that upon due enquiry, this deponent is unable to learn the residence of the said defendant, and that the said defendant cannot be found within this State, to the knowledge or belief of this deponent; and this deponent further says, that the said defendant owns a large amount of property within this State, to wit, a house and lot in the city of Albany (or a large amount of personal property, in the hands of one G. H., as this deponent has been informed by the said G. H., as the same may be.)

L. M.

Sworn, &c.

[No. 30.]

Affidavit for order to publish summons.

Greene County, ss: A. B., of said county, being sworn, says, he has a good cause of action against R. M., of the city of Boston, State of Massachusetts, founded on a promissory note (or for goods sold to the said R. M., or whatever the cause of action may be;) that the said R. M. is not a resident of this State, but resides in the city of Boston, State of Massachusetts; that the said R. M. has property in this State to a large amount, as this deponent is informed and believes, to wit: a large farm in the county of Allegany, occupied by one S. T.; that the said S. T. informed this deponent that the said R. M. owned the said farm, and that he, the said S. T. informed this deponent that he paid rent therefor to the said R. M., and the said R. M. has a large quantity of goods, wares and mechandise in the hands of E. F., of the city of Albany, as this deponent is informed and believes, that the said E. F. represents himself as the agent of the said R. M. and is engaged in selling the same as the property of the said R. M.

A. B.

Sworn, &c.

[No. 31.]

Affidavit to obtain security for costs.

(Title of the action.)

Ontario County, ss: H. B. being sworn, says, that this action was commenced by the personal service of a summons (and complaint) on this defendant; that the said plaintiff is a non-resident of this State, as this deponent has been informed, and believes, by one G. H., that said plaintiff resides in the State of Vermont, and not within the jurisdiction of this court, (or that since the commencement of this action the said defendant has removed from this State to the

State of Illinois, and hereafter intends residing there and is no longer a citizen of this State, and not within the jurisdiction of this court;) or, (that said plaintiff is an infant, whose next friend by whom he appears, has not given security for costs.)

H. B.

Sworn, &c.

[No. 32.]

Affidavit to set aside default.

(Title of the action.)

Chenango county, ss: N. P. being sworn, says, he is the defendant's attorney in this action; that the summons (and complaint) were served on the defendant on the first day of May last past, as he is informed by the said defendant. And deponent further says, that as the attorney of said defendant, he did on the eighth of said May, serve on the attorney for the plaintiff in this action a notice of retainer and a demand of complaint; that such service was made by enclosing the same in an envelope addressed to the said attorney for plaintiff at his residence in the city of Troy, and paying the postage thereon. And deponent further says that, notwithstanding, the service of notice of retainer and demand of copy complaint, the said plaintiff's attorney did enter up judgment in this action, as appears by the docket of the said judgment now made in the clerk's office of the said county of Chenango. And deponent further says that the said defendant has a good defence on the merits in this action, as will appear by the affidavit of the said defendant hereto annexed.

N. P.

Sworn, &c.

[No. 33.]

Affidavit to set aside inquest.

(Title of action.)

County of Schenectady, ss: M. N. being sworn, says, he is attorney for the defendant in this action; that issue was joined herein on the third day of March last past, and the action was noticed for trial by the plaintiff (and defendant) at a circuit court, to be held at the court house in the city of Troy, on the first Monday of April last past. And this deponent further says, that on the thirtieth day of March aforesaid, an affidavit of merits, of which the annexed is a true copy, was sworn to by the said defendant, and the same was, on the first day of April, filed in the office of the clerk of Rensselaer county; and that a copy of the said affidavit was, on the said first day of April, served on the attorney for the plaintiffs in this action, as appears by the affidavit of such service hereto annexed. And this deponent further says, that, notwithstanding the said filing and service of the affidavit of merits, the plaintiff's attorney took an inquest in the said action, out of its regular order on the calendar, on the fifth day of April last past, and entered a judgment thereon for one thousand dollars.

M. N.

Sworn, &c.

[No. 34.]

Affidavit on taxing costs.

(Title of action.)

County of Cayuga, ss: J. B., being sworn, says, he is the attorney for the plaintiff (or defendant) in this action, and that R. P., W. G., and N. O., were severally subpœnaed and attended as witnesses on the part of the plaintiff (or defendant) in this action, and that they were severally and necessarily in attendance four days each on the trial of this action; that the said R. P. resides in the town of C., and travelled ninety miles from his place of residence to attend

the trial of this action; and the said W. G. and N. O., each travelled thirty miles from the town of P., their residence, to be present at the trial of this action. And this deponent further says that all the disbursements mentioned in the annexed bill of costs, have been actually expended or incurred in this action.

J. B.

Sworn, &c.

[No. 35.]

Affidavit for stay of proceedings on motion for new trial.

(Title of action.)

County of Saratoga, ss: A. B. being sworn, says, he is the plaintiff (or the defendant) in this action; that the said action was tried at the last Saratoga circuit, on the fifteenth instant, before the Hon. Ira Harris, one of the justices of this court, and a verdict rendered for the defendant (or the plaintiff) for the sum of five hundred dollars; and this deponent further says, that he is advised by his counsel, and verily believes, that the said judgment was and is erroneous, and against the weight of evidence offered on the trial of this action (or whatever the ground of objection may be,) and that the same ought to be set aside; and this deponent further says, that it is his intention to move this court that the said verdict be set aside (and a new trial ordered,) and that for the purpose of making such motion, it is necessary that the plaintiff's (or defendant's) proceedings on said verdict be stayed until the further order of this court.

A. B.

Sworn, &c.

[No. 36.]

Affidavit to move for reference.

(Title of action.)

Greene County, ss: A. B., the plaintiff (or the defendant) in the above entitled action, being sworn, says, that

this action is brought to recover a demand claimed to be due on contract for work, labor and services; that the complaint sets forth a large number of items of demand, and the answer herein also contains a large number of items, which defendant claims to set off or to recoup against the said plaintiff, and the trial of this action will require the examination of a long account on the part of the plaintiff (or defendant, or on the part of both parties.)

A. B.

Sworn, &c.

[No. 37.]

Affidavit to oppose motion for reference.

(Title of action.)

Erie County, ss: A. B., the plaintiff (or defendant) in this action, being sworn, says, that questions of law will arise on the trial of this action, as he is advised by his counsel, and verily believes, that is to say, the complaint herein sets forth the following (state what,) to which the defendant in his answer pleads as follows (state what,) and that the following will be insisted on, on behalf of this deponent (state the point of law to be urged;) and this deponent has been informed, and believes, that the defendant's (or plaintiff's) counsel will urge as follows: (State briefly the points of law anticipated.) And this deponent is advised by his said counsel, and verily believes that such points are material and difficult, and that referees are not a proper tribunal for the trial of this action. And deponent further says that many of the items of account set forth in the complaint and answer, are admitted by the pleadings, and the decision of the facts herein will not require much time, nor the examination of a long account, the only facts in issue being the following: (State them.)

A. B.

Sworn, &c.

[No. 38.]

Affidavit to consolidate actions.

(Title of the several actions.)

County of Dutchess, ss: L. M., the defendant in the above several actions, being sworn, says, that each of said actions is brought to recover a demand claimed to be due on a certain written contract, and that the said several actions seek to recover the money therein claimed to be due in instalments; and that the causes of action are the same, and such as may be properly joined in one action, and that the defence to each of the said actions is substantially the same; and that the questions which will arise in all of the said actions are substantially the same, (or that the above actions are brought to recover the possession of certain real property, to wit, city lots, and that the fact in issue is a question of title; and that the facts set forth in the several complaints, and the defences set up in the said answer are substantially the same; and that the questions which will arise on the trial of the said several actions are substantially the same.)

L. M.

Sworn, &c.

[No. 39.]

Affidavit to move for a special jury.

(Title of the action.)

County of Onondaga, ss: M. R., being sworn, says, he is the plaintiff in the above entitled action; that the same is brought against the above defendant, for uttering and publishing of this plaintiff, in his official character as a representative in Congress, (or whatever the office may be,) the following libellous and scandalous words, to wit: (Here insert the words, as stated in the complaint.) And this depo-

nent further says, that the said words, so as aforesaid uttered and published of this deponent, are wholly and entirely false.

M. R.

Sworn, &c.

[No. 40.]

Affidavit to move for costs of circuit.

(Title of the action.)

Chenango county, ss: B. P., being sworn, says, he is the attorney for the defendant in this action, and the place of trial herein is the county of Chenango, and that issue herein was joined on the fifth day of May last past, and that notice of the trial of this action was served on this deponent for the circuit court to be held at the village of Norwich in said county on the first Monday in July inst. And this deponent further says, that the said circuit was holden at the time and place in the said notice mentioned, and that this deponent attended the said court with the defendant and his witnesses, but that the above named plaintiff did not proceed to the trial of the said action nor countermand said notice of trial, and that younger issues were tried at the said circuit in their regular order on the calendar.

B. P.

Sworn, &c.

[No. 41.]

Affidavit to move for new trial for irregularity.

(Title of the action.)

County of Stuben, ss: G. W., being sworn, says, he is the attorney of the defendant in this action; that the reply herein was served on this deponent on the twentieth day of

April last past, and on the same day a notice for trial for the said action, at a circuit court to be holden at the court house in the village of Bath in said county, was also served on this deponent; that this deponent returned the said notice to the plaintiff's attorney with notice that this deponent intended to, and should amend his answer in this action. And this deponent further says, that afterwards, on the first day of May, he, this deponent, did amend the said answer and caused the same to be served on the plaintiff's attorney herein, and notwithstanding the said notice and the service of the copy of the said amended answer, the said plaintiff's attorney did proceed to the trial of the said action at the said circuit court, and obtained a verdict against the defendant for five hundred dollars.

G. W.

Sworn, &c.

[No. 42.]

Affidavit to move for new trial on the ground of newly discovered evidence.

(Title of the action.)

Albany (City and) County, ss: P. M., the above defendant, being sworn, says, this is an action founded on contract (or state the cause of action) and the defence set up thereto by this deponent was (state what.) And deponent further says, that this action was tried at a circuit court holden at the city hall in the city of Albany, on the first Monday of March, 1851, and a verdict rendered therein for the plaintiff for one hundred dollars. And this deponent further says, B. G., of the town of Bethlehem in said county, can testify to the following facts: (stating particularly what, or to the facts stated in the affidavit of the said B. G., hereto annexed.) And this deponent further says, that such evidence has been discovered since the said trial, and was not previously

known to this deponent to exist, and that the same is material to this deponent, as he is advised by his counsel and verily believes.

P. M.

Sworn, &c.

[No. 43.]

Affidavit to set aside proceedings for irregularity.

Washington County, ss: A. B., being sworn, says, he is the attorney for the plaintiff (or defendant in this action;) that the same was commenced by the personal service of a summons and complaint, (here state the regular proceedings generally, the proceeding next before the irregularity particularly, with certainty as to time, place, &c.; and then the facts constituting the irregularity with the like certainty.)

[No. 44.]

Affidavit of plaintiff to examine witness de bene esse.

(Title of the action.)

Wayne county, ss: C. D., the plaintiff in this action, being sworn, says that this action is brought to recover a demand due this plaintiff on contract, (or whatever may be the subject of the action) and that, as this deponent is advised by his counsel, and verily believes to be true, M. N., at present a resident of Lyons in this county, (or otherwise according to the fact,) is a material witness for the deponent, in this action, and that he cannot safely proceed to the trial thereof, without the benefit of the testimony of the said witness; and this deponent further says, that the said M. N., as this deponent is informed and believes, is about to depart from this state to foreign parts, to wit, the island of

Madeira, and intends residing there a long period of time, and may never return again within the jurisdiction of this court.

C. D.

Sworn, &c.

[No. 45.]

Affidavit of defendant to examine witness de bene esse.

(Title of the action.)

Erie County, ss: E. F., the defendant in this action, being sworn, says, that this action is brought to recover a demand alleged to be due the plaintiff herein, on contract as follows, to wit: (here state the part of the complaint necessary) and that the defence to the same is as follows: (here state that part of the answer forming the issue) and that as he, this deponent, is advised by his counsel, and verily believes G. H., at present of the city of Buffalo, is a material witness for him, this deponent in this cause: and that the said G. H. intends soon to leave for Europe and will be absent several years. And this deponent further says, that as he is also advised and verily believes, he, this deponent, has a good and substantial defence in this action on the merits, and cannot safely go to trial without the benefit of the testimony of the said witness.

E. F.

Sworn, &c.

[No. 46.]

Affidavit to hold to bail for injury to the person.

(City and) County of Albany, ss: A. B., of said city, being sworn, says, that he has a good cause of action against one C. D. of this city, arising upon the following facts: that on the fifth day of June, inst., while he, this de-

ponent, was passing quietly along State street in said city, the said C. D., without any cause or provocation from deponent, committed a violent assault upon this deponent, whereby this deponent was much bruised and injured; and this deponent believes he is justly entitled to recover damages for the aforesaid assault, to the sum of five hundred dollars. And this deponent further says, he is about to commence (or has commenced) an action against the said C. D. in the supreme court for the recovery of the said damages.

A. B.

Sworn, &c.

[No. 47.]

Affidavit to hold to bail for injury to property.

County of Rensselaer, ss: A. B., being sworn, says, that he has a good cause of action against C. D., of the town of Greenbush in said county, upon the following facts, to wit: that the said C. D. wrongfully and wilfully took from the possession of the deponent the following personal property: (here describe it particularly) and converted the same to his own use (or whatever the nature of the injury may be,) and this deponent believes he is justly entitled to recover damages for the injury aforesaid, to the sum of six hundred dollars. And this deponent further says, that he has commenced (or is about to commence) an action in the supreme court for the recovery of the said damages.

A. B.

Sworn, &c.

[No. 48.]

Affidavit to hold to bail in slander.

City and County of New-York, ss: A. B., of said city, being sworn, deposes and says, that on the third day of July inst., while this deponent (or several persons) was in the

public room of the B. hotel, in said city, C. D., whose residence is unknown to this deponent, came into the said room, and in the presence (of this deponent, and) of E. F. and G. H., and several other persons, without any cause or provocation, spoke and uttered of this deponent, the following slanderous and defamatory words, that is to say: (State the exact words as laid in the complaint, and any other aggravating circumstances; and annex affidavits of a third person, if advisable.)

A. B.

Sworn, &c.

[No. 49.]

Affidavit to obtain a ne exeat

(Title of action.)

Albany County, ss: H. M., the above named plaintiff, being sworn, deposes and says, that the above named defendant is justly indebted to this deponent, in the sum of one thousand dollars, for (state the cause of action,) for the recovery of which, he, this deponent, has lately commenced an action in this court against the said defendant; that the said defendant has not answered or demurred herein, nor has any attorney served a notice of retainer for the said defendant; and that being so indebted, he, the said defendant, has lately threatened and given out, that he will speedily leave this State, for the purpose of avoiding the payment of his debts, and go into Canada. And this deponent verily believes, that if the said defendant is permitted to leave this State, this deponent will either lose his said debt, or the same will be very much endangered, and it will be difficult, if not impossible, for this deponent to recover the same.

H. M.

Sworn, &c.

[No. 50.]

Affidavit to procure discharge of ne exeat for neglect to prosecute action.

(Title of action.)

County of Albany, ss: M. H., attorney for the plaintiff, being duly sworn, says, that this action was commenced by the personal service of a summons upon the defendant in this action on the first day of July, 1851, and that on the 8th day of the same month, he, this deponent, served upon the plaintiff's attorney herein, a notice of retainer for the defendant in this action, and a demand of the copy complaint herein, and that no copy of the complaint in this action has been served upon this deponent, although more than twenty (or forty) days have elapsed since the service of the said demand of copy complaint.

M. H.

Sworn, &c.

[No. 51.]

Affidavit to examine judgment debtor in supplementary proceedings.

(Title of action.)

Albany (City and) County, ss: N. M., the above named plaintiff or (defendant) being duly sworn, says, that judgment was recovered in this action against the above named defendant (or plaintiff,) on the 10th day of July, 1851, for one hundred dollars (damages and) costs; and the judgment roll filed in the office of the clerk of the (city and) county of Albany, on that day, (and a transcript thereof in due form, duly issued and filed in the clerk's office of the county of Oneida, and judgment docketed in the said county of Oneida on the eleventh day of July aforesaid,) and that an execution against the property of the judgment debtor has been duly issued to the sheriff of the county of Albany, (or

Oneida,) the county where the said judgment debtor resided at the time of issuing the said execution, and still so resides; and that the said sheriff has returned the said execution (wholly) unsatisfied.

N. M.

Sworn, &c.

[No. 52.]

Affidavit to examine third persons as to property of judgment debtor.

(Title of action.)

County of Albany, ss: N. M., the above named (same as the foregoing to the close, then add,) and R. H., of Albany, and S. H., of the same place, are severally indebted to, (or have property of) the said judgment debtor in an amount exceeding ten dollars.

N. M.

Sworn, &c.

[No. 53.]

Affidavit of service of subpœna.

(Title of action.)

Putnam County, ss: N. P., being duly sworn, says, that on the third dav of April, inst., he served at the village of Cold Spring, the within subpœna on N. M., the person named therein as witness, personally, by then and there showing to the said N. M., the said subpœna, and delivering to him a subpœna ticket, containing the substance of the said subpœna, and paying (or tendering) to him, the said N. M., at the same time and place aforesaid, the sum of three dollars for his fees for travelling to and from the court named in the said subpœna, and for his attendance thereat.

N. P.

Sworn, &c.

[No. 54.]

Affidavit to procure habeas corpus ad testificandum.

(Title of action.)

Kings County, ss: C. H., the plaintiff (or defendant) in this action, being sworn, says, that this action is brought to recover a demand (claimed to be due) on contract, as follows: (here set forth the part of the complaint concerning which the witness is to testify) that the defence to the same is as follows: (here set forth the allegations which raise the issue,) and Y. Z., who is now a prisoner in the custody of the sheriff of the county of Queens, is and will be a material witness for this plaintiff (or defendant) at the trial of this action, as he is advised by his counsel, and verily believes. And that without the benefit of the testimony of the said Y. Z., this plaintiff (or defendant) cannot safely proceed to the trial of this action, as he is also advised by his said counsel, and verily believes. And deponent further says, that this action is noticed for trial at a circuit court to be holden in the county of Kings on the fifteenth instant; (or before I. M. the Referee herein,) and that this application to procure the attendance of the said Y. Z. as a witness for this plaintiff (or defendant) is without any fraud or connivance between this deponent and the said Y. Z.

C. H.

Sworn, &c.

[No. 55.]

Affidavit to move for exoneretur of bail.

(Title of action.)

County of Kings, ss: A. B. (and C. D.) one of the bail (or the bail) for the defendant in this action, being sworn, do (severally) depose and say, that judgment was obtained and docketed in this action against the above defendant, on or about the tenth day of July, 1851; and that an execution

was duly and in due form issued thereupon, on the eleventh day of the same month, as this (or these) deponent is informed, and believes (or state whatever may be the state of the action.) And this deponent further says, that after the issuing, and before the return of the said execution, to wit: on or about the second day of August, 1851, the said defendant (or the said defendant died before the case was at issue as the fact may be.)

A. B.

(Severally) sworn, &c. (C. D.)

[No. 56.]

Affidavit of publication of summons or notice.

Albany (City and) County, ss: N. P., of Albany, being sworn, says, he is the foreman (or printer, or principal clerk,) in the office of the Albany Atlas, a newspaper published weekly (or daily) in the city of Albany, and the summons (or notice) dated July 1, 1850, to a printed copy, whereof this affidavit is annexed, was published once (or twice) in each week, thirteen weeks successively, in said paper; and the said summons (or notice) was first so published on the said first day of July, and was last so published on the twenty-third day of September, 1850.

N. P.

Sworn, &c.

[No. 57.]

Affidavit to extend time.

(Title of action.)

County of Rensselaer, ss: C. H., the defendant's (or plaintiff's) attorney herein, says, that the complaint (or answer) herein was served on the third day of August, 1851, and that the time to answer (or reply) to the same expires

to-morrow and that since the service of the said complaint (or answer) this deponent has been unable to prepare the answer (or reply) thereto, owing to certain circumstances which this deponent could not control, (or because the said defendant (or plaintiff) has been absent from this county) and this deponent could not prepare the same without consultation with the said party by whom he is retained in this action.

C. H.

Sworn, &c.

[No. 58.]

Affidavit to obtain order to perpetuate testimony.

Saratoga County, ss: T. W., of Saratoga, being duly sworn, says, he is a party to an action actually pending in the supreme court of this State, in which he is plaintiff (or defendant,) and one S. R., is defendant (or plaintiff;) that the said action is brought, (state the cause of action,) (or says that he has good reason to expect to be made a party to an action in a court of record) and that the testimony of A. B., of the town of Saratoga in said county, within this State, is material and necessary to the prosecution (or defence) of such action, and that the party (expected to be) adverse to this deponent resides within this State and is of full age.

T. W.

Sworn, &c.

[No. 59.]

Affidavit to procure a warrant against ships and vessels.

Albany (City and) County, ss: A. M., a disinterested witness, being sworn, says, he verily believes that the demand of B. A., stated in the foregoing petition and in his account annexed to his said petition, is justly due to him,

the said B. A., over and above all payments and discounts in the manner stated by him in his said petition, and that the facts and circumstances to establish such demand, so far as they are within the knowledge of this deponent, are as follows, to wit: that this deponent is a journeyman ship carpenter, and worked for the said B. A. while repairing the said ship, (or was clerk for the said B. A., who furnished the goods in his said account, mentioned:) (or was employed by the said B. A. to take charge of the wharf of the said B. A., and watch the said vessel.)

A. M.

Sworn, &c.

[No. 60.]

Affidavit on sale of real estate.

(Title of action.)

Albany county, ss: M. B., being sworn, says, he is the person who was appointed and officiated as referee (or auctioneer) at the sale published in the notice to a printed copy, of which this affidavit is annexed; and this deponent further says, that the said sale, pursuant to the said notice, took place at public auction in the day time, at the rotunda of the Merchant's Exchange, in the city of Albany, at twelve o'clock, noon, at which time and place A. C. became the purchaser of the (mortgaged) premises in the said notice, mentioned and described, at and for the sum of one thousand dollars lawful money of the United States, which the said A. C. then and there bid; that being the highest price bid therefor; said sale was open fair and conducted as prescribed by statute, and made to the purchaser in good faith.

M. B.

Sworn, &c.

[No. 61.]

Affidavit to obtain injunction.

(Title of action.)

Warren County, ss: J. P., being sworn, says, this action is (or about to be) commenced against M. N., (state the cause of action, or that portion concerning which the injunction is to be applied for) and that he has (or heard) read the complaint in this action, and knows the contents thereof; that he is familiar with all the material matters stated in said complaint, and has actual knowledge thereof, and that from such knowledge he knows that the matters of fact therein stated are true.

J. P.

Sworn, &c.

[No. 62.]

Assignment of bail or undertaking, by sheriff.

Know all men by these presents, That I, A. B., sheriff of the county of Monroe, do hereby assign the within bail bond (or undertaking) to (the within named) C. D., at his request, to be sued for by him, according to the force, form and effect of the statute in such case made and provided. In testimony whereof, I have hereunto set my hand and seal this twentieth day of November, 1851.

A. B., Sheriff. [L. S.]

[No. 63.]

Attachment against sheriff.

The People of the State of New York, to any coroner of the county of Albany, greeting:

We command you, that you attach W. B., sheriff of the county of Albany, so that you may have his body before

our supreme court, at the city hall in the city of Albany, in the county of Albany, on the last Tuesday of October, 1851, at the opening of the court on that day, to answer to us for certain trespasses and contempts done and committed in our said supreme court, before the justices thereof,* and that you then and there have this writ.

Witness, A. J. Parker, Esq., one of the justices of our supreme court, this second day of October, 1851.

By the Court.

[L. S.] R. L., Clerk.

(Endorsed.)

Supreme Court. The People of the State of New York, *ex rel.* L. M., vs. W. B., sheriff of the county of Albany. Attachment returnable the last Tuesday of October, 1851, at the city hall in the city of Albany: Issued for not returning a certain writ of execution between L. M., plaintiff, and N. G., defendant.

H. B., Attorney.

Let the defendant be held to bail in the sum of five hundred dollars.

Oct. 2, 1851.

A. J. PARKER.

[No. 64.]

Attachment against sheriff—another form.

(As in the last form to the * then) and let the said W. B. be held to bail in the sum of one thousand dollars, and that you then and there have this writ.

Witness, &c.

(Endorsed.)

Supreme Court. The People of the State of New-York, *ex rel.* L. M., vs. W. B. Sheriff of the county of Albany. Attachment returnable the last Tuesday of October, 1851, at the city hall in the city of Albany. Issued for not returning a certain writ of execution between L. M., plaintiff, and N. G., defendant.

H. B., Attorney.

[No. 65.]

Attachment against coroner for not returning an attachment.

The People of the State of New York, to O. C. and B. A., appointed elisors by our justices of our supreme court, to execute this writ, greeting:

We command you, respectively, to attach D. Y., Esquire, coroner of the county of Albany, so that you may have him before our supreme court, at the city hall in the city of Albany, on the last Tuesday of December, 1851, at the opening of court on that day, to answer to us for certain trespasses and contempts done and committed in said supreme court, before the justices thereof, and that you then and there have this writ.

Witness, A. J. Parker, Esq., one of the justices of our supreme court, this third day of December, 1851.

By the Court.

[L. S.] R. L., Clerk.

(Endorsed.)

Supreme Court. The People of the State of New York, *ex rel.* L. M. vs. D. Y., coroner of the county of Albany. Attachment returnable the last Tuesday of December, 1851, issued for not returning an attachment against W. B., sheriff of the county of Albany.

H. B., Attorney.

Allowance of the foregoing attachment.

(Endorsed.)

Due proof having been made before me of the default of D. Y., Esquire, one of the coroners of the county of Albany, in returning a certain attachment directed and delivered to him, commanding him to attach W. B., Esquire, sheriff of the county of Albany, for an alleged contempt in not returning a certain execution heretofore issued to the said sheriff, between L. M., plaintiff, and N. G. defendant (or whatever may be the cause of contempt.) I do therefore allow the

within attachment to issue, and the cause of issuing the same is the default of the said coroner in making return to the attachment, as above mentioned, and the said D. Y. is not to be discharged on bail, or in any other manner, but by order of the court.

A. J. PARKER.

[No. 66.]

Attachment against witness for not obeying a subpœna.

The People of the State of New York, to the sheriff of the city and county of Albany, greeting:

We command you to attach B. P., if he may be found in your county, and bring him forthwith, (or on the sixth instant) personlly before our circuit court, held in and for our county of Albany, at the city hall, in the city of Albany, to answer unto us for certain trespasses and contempts against us in not obeying our writ of subpœna, commanding him to appear on the fourth instant before our circuit court, at the city hall aforesaid, to testify and give evidence in a certain action then to be tried between C. L., plaintiff, and M. G., defendant, on the part of the plaintiff (or defendant;) and you are further commanded to detain him in your custody until he shall be discharged by our said circuit court, and have then and there this writ.

Witness, A. J. Parker, Esq., one of the justices of our supreme court, this fifth day of November, 1851.

By the Court.

[L. S.] R. L., Clerk.

H. O., Attorney.

(Endorsed.)

Supreme Court. The People of the State of New York, *ex rel.* C. L., vs. B. P. Attachment, returnable November 6, 1851.

H. O., Attorney.

Allowed this fifth day of November, 1851.

A. J. PARKER.

[No. 67.]

Attachment against a foreign corporation, or absent, or concealed debtor.

The People of the State of New York, to the sheriff of the county of Albany, greeting:

Whereas, A. B., of the city of Albany, has made application to me for an attachment against C. D., setting forth by petition (or affidavit) that the said C. D. is a foreign corporation, (or a non-resident, or has absconded or concealed himself) and also setting forth that he has a good cause of action against the said C. D.; and, whereas, the said A. B. has also given the undertaking required by law:

Now you are hereby commanded to attach and safely keep all the property of the said C. D. within your county, or so much thereof as may be sufficient to satisfy the demand of the said A. B., amounting to five hundred dollars, together with his costs and expenses in this action, and that you proceed herein in the manner required of you by law.

Given under my hand at the city of Albany, this fifth day of November, 1851.

A. J. PARKER, Justice.

[No. 68.]

Bill of plaintiff's particulars.

(Title of action.)

Sir: I hereby give notice that the following is the plaintiff's bill of particulars in this action, and for the recovery of which this action is brought, to wit: (here set forth the several items of the demand, the amount thereof, and the dates of each as near as may be.)

Albany, Nov. 10, 1851.

Yours, &c.,
L. M., Plff's. Atty.

To G. W., Esquire, Deft's Atty.

(Add affidavit when necessary.)

[No. 69.]

Bill of particulars of defendant's set off, or counter-claim.

(Title of action.)

Sir: Please take notice that the following are the particulars of the set off, (or counter claim) pleaded by the defendant in his answer in this action, to wit: (here state the several items as in the foregoing.)

Albany, Nov. 10, 1851.

Yours, &c.,

G. W., Deft's Atty.

To. L. M., Esq., Plff's Atty.

(Add affidavit when necessary.)

[No. 70.]

Bond for defendant's costs.

Know all men by these presents, that L. M., of Boston, H. G., merchant, of the city and county of Albany, and E. F., merchant, of the city of Albany, are held and firmly bound unto N. P., in the sum of two hundred dollars, lawful money of the United States of America, to be paid to the said N. P., his executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals. Dated this fifth day of November, 1851.

Whereas, the said L. M. has commenced an action in our supreme court against the said N. P.; now the condition of the above obligation is such, that if the above named L. M. shall pay on demand all costs that may be awarded to the defendant in the said action, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of }

L. M. [L. S.]
H. G. [L. S.]
E. F. [L. S.]

(Add acknowledgment and justification of sureties.)

[No. 71.]

Bond on discharge of attachment against ships and vessels.

Know all men by these presents, that we, B. A., merchant, of the city of Albany, H. N. Tanner, of the same place, and N. O., merchant, of the same city, are held and firmly bound in the sum of one thousand dollars, (double the amount sworn to by the creditor) to be paid to A. W., his executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 3d day of November, 1851.

The condition of this obligation is such, that if the above bounden, B. A., shall pay the amount of all such claims and demands as have been exhibited, and which shall be established to be existing liens upon the vessel, or steam propeller, called Albany, her tackle, apparel and furniture at the time of exhibiting the same to his honor, W. P., Albany county judge, (or a justice of the supreme court) then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of }

B. A. [L. S.]
H. N. [L. S.]
N. O. [L. S.]

[No. 72.]

Bond to sheriff upon a ne exeat.

Know all men by these presents, that we, H. G., merchant, of the city of Troy, and M. B. and A. N., merchants, of the same place, are held and firmly bound unto J. L., sheriff of the county of Rensselaer, in the penal sum of one thousand dollars, to be paid to the said sheriff, or his assigns; for which payment well and truly to be made, we bind our-

selves jointly and severally, and our, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 4th day of Nov., 1851.

Whereas, the above named H. G., has been arrested upon a writ of ne exeat, issuing out of and under the seal of the supreme court of the State of New York, in a certain action therein pending, wherein R. C. is plaintiff, and the said H. G. is defendant, and is now in custody of the said sheriff by virtue thereof:

Now the condition of this obligation is such, that if the said H. G. shall not depart from or leave this State, without the permission of the said supreme court, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of

H. G. [L. S.]
M. B. [L. S.]
A. N. [L. S.]

[No. 73.]

Bond to obtain discharge of ne exeat.

Know all men by these presents, that we, H. G., merchant, of the city of Troy, and M. B. and A. N., merchants, of the same place, are held and firmly bound unto R. C., of the village of Lansingburgh, in the penal sum of one thousand dollars, to be paid to the said R. C., his executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves jointly and severally, firmly by these presents. Sealed with our seals and dated the fifth day of November, 1851.

Whereas, the above named H. G. has been arrested upon a writ of ne exeat, issued out of and under the seal of the supreme court of the State of New York, in a certain action therein pending, wherein the said R. C. is plaintiff, and H. G. is defendant, and is now in the custody of the sheriff of the county of Rensselaer, by virtue thereof:

Now the condition of this obligation is such, that if the said H. G. shall at all times render himself amenable to the process of the said supreme court pending the said action, and to such as may be issued to compel a performance of the final judgment therein, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of }

H. G. [L. S.]
M. B. [L. S.]
A. N. [L. S.]

[No. 74.]

Bond of receiver.

Know all men by these presents, that we, G. B., mechanic, of the city of Albany, and M. P., and K. A., merchants, of the same place, are held and firmly bound unto the clerk of the supreme court of the State of New-York, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said clerk, his successors in office, or assigns. For which payment, well and truly to be made, we and each of us bind ourselves respectively, jointly and severally, and our respective heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated October 10, 1851.

Whereas, by an order made by the supreme court on the ninth instant, (or by W. P., a county judge or justice of the supreme court,) the above bounden G. B. was appointed receiver of all the debts, property, equitable interests, and things in action of A. R.

Now the condition of this obligation is such, that if the said G. B. shall faithfully discharge the duties of his trust, and shall obey as required, the rules, practice and orders of the said court, as such receiver, then this obligation to be void, otherwise to remain in full force and effect.

Sealed and delivered in presence of }

G. B. [L. S.]
M. P. [L. S.]
K. A. [L. S.]

[No. 75.]

Bond of receiver under Chap. 2, Title 9, of Code.

Know all men by these presents, that we, A. B., of the city of Albany, and C. D., of the same place, are held and firmly bound unto the clerk of the county of Albany, in the sum of five hundred dollars, to be paid to the said clerk, his successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the first day of October, 1851.

Whereas, by an order made by W. P., Albany county judge, on the thirtieth day of September, 1851, the above bounden A. B., was appointed the receiver of all the debts, property, equitable interests, and things in action of L. M., a judgment debtor, pursuant to the provisions of Chapter 2, Title 9, of the Code of Procedure:

Now, therefore, the condition of the above obligation is such, that if the said A. B. shall faithfully discharge the duties of his trust as such receiver, then this obligation shall be void, otherwise to be in full force and effect.

Sealed and delivered in presence of }

A. B. [L. S.]
C. D. [L. S.]

[No. 76.]

Bond of general guardian.

Know all men by these presents, that we, N. B., farmer, of the town of Bethlehem, county of Albany, J. G., merchant, and M. S., tanner, of the same place, are held and firmly bound unto A. B., in the penal sum of five hundred dollars, to be paid the said A. B., his executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the first day of October, 1851.

Whereas, by an order made by the supreme court of the State of New York, made on the twentieth day of September, 1851, the above bounden N. B. was appointed the general guardian of the person and estate of the above named A. B., an infant, under the age of twenty-one years, upon his executing a bond to the said A. B., with sufficient security to be approved by one of the justices of this court, in the penalty and upon the condition therein mentioned.

Now, therefore, the condition of this obligation is such, that if the above bounden N. B. shall faithfully perform his trust as such guardian, and shall file an inventory of the estate of the said infant within six months after his appointment, and render an annual inventory or account of his guardianship, and shall observe and obey all the general rules of said court, respecting general guardians, and such orders as shall be made from time to time by the said court in relation to such trust; and if he shall render a just and true account of all moneys and property of the said infant which shall come to his hands as such general guardian, and of the application thereof, and of his guardianship generally, before any court having jurisdiction, whenever he shall be thereunto lawfully required, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in presence of

N. B. [L. S.]
J. G. [L. S.]
M. S. [L. S.]

(Approval endorsed.)

I approve of the within bond and security as to the sureties, and the form and sufficiency thereof. October 2, 1851.

IRA HARRIS.

[No. 77.]

Bond of guardian ad litem in partition.

Know all men by these presents, that we, M. H., of the city of Albany, merchant, and B. P., counsellor at law, and N. S., merchant, of the same place, are held and firmly

bound unto the people of the State of New York, in the penal sum of eight hundred dollars, lawful money of the United States, for which sum well and truly to be paid, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated the third day of November, 1851.

Whereas, by an order made by the supreme court of the State of New York, on the twentieth day of October, 1851, in a certain action in which C. D. is plaintiff, and M. G. and E. B., infants, under the age of twenty-one years, are with others, defendants, appointing the above named M. H., guardian ad litem of the before named infants, to appear for them, and defend this action in their behalf, upon his giving the bond therein required:

Now, therefore, the condition of this obligation is such, that if the above bounden M. H. shall faithfully discharge the trust committed to him as such guardian, and shall render a just and true account of his guardianship whenever lawfully required, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered in presence of }

M. H. [L. S.]
B. P. [L. S.]
N. S. [L. S.]

(Approval endorsed.)

I approve of the within bond as to form and execution, and also of the sufficiency of the sureties executing the same. Nov. 4, 1851.

IRA HARRIS.

[No. 78.]

Bond of guardian on sale of infant's estate.

Know all men by these presents, that we, A. B., broker, of the city of Albany, and J. G., broker of the same place, and W. V., pension agent of the town of Greenbush, are

held and firmly bound unto E. P., of Troy, an infant under the age of twenty-one years, in the just and full sum of six hundred dollars, to be paid to the said E. P., her heirs, executors, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated Nov. 5, 1851.

Whereas, the above bound A. B. was by an order of the supreme court, held before J. H., justice, at a special term of said court, held at the city hall in the city of Albany, on the 2nd day of November, 1851, appointed special guardian of said E. P., for the sale of certain real estate of said E. P. referred to in said order:

Now, therefore, the condition of this obligation is such, that if the above bounden A. B. shall faithfully perform the trust reposed in him as such guardian, and for paying over, investing and accounting for all moneys that shall be received by him, according to the order of any court having authority to give direction in the premises, and observe the orders and directions of the court in relation to said trust, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of }

A. B. [L. S.]
J. G. [L. S.]
W. V. [L. S.]

(Approval endorsed.)

I approve of the within bond and security as to the sureties, and the form and sufficiency thereof.

IRA HARRIS.

[No. 79.]

Bond on allowing injunction.

Know all men by these presents, that J. G., of the city of Buffalo, merchant, and C. L. and M. D., of the same place, brokers, are held and firmly bound unto M. P., of the city

of Rochester, in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said M. P., his executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves jointly and severally, and our respective heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated September 5th, 1851.

Whereas, the said J. G. has commenced an action in the supreme court, against the said M. P., (here state the cause of action and for what injunction issues.)

Now, therefore, the condition of the above obligation is such, that if the above bounden J. G. shall pay or cause to be paid to the said M. P., his executors, administrators or assigns, all moneys which may be recovered by the said M. P., or his legal representatives, against the said J. G. for damages and costs on account of the issuing of the said injunction, and shall also pay M. P. all costs as may be awarded to the said M. P. by the supreme court in the action aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.

J. G. [L. S.]
C. L. [L. S.]
M. D. [L. S.]

(Approved as the foregoing.)

[No. 80.]

Exceptions on the part of the defendant.

(First set out the summons, complaint, answer and reply, then proceed as follows :)

County of Albany :

On the thirteenth day of Feb., 1851, at a circuit court held at the city hall in the city of Albany, in and for the county of Albany, came the parties aforesaid, by their attorneys aforesaid, before Ira Harris, Esq., one of the justices of this court, and the jurors summoned to try the said issue being called also

came, who to speak the truth of the matter aforesaid were chosen, tried and sworn. And upon the trial of that issue, the counsel for the plaintiff, in order to maintain the issue on the part of the plaintiff, gave in evidence that, &c., (here set out the evidence on the part of the plaintiff, noting what exceptions are made to it by the defendant.) The counsel for the plaintiff here rested, and the counsel for the defendant then moved for a non-suit, on the ground that the testimony submitted did not show that there was a valid or sufficient acceptance of the said bill to charge the defendant (or as the fact may be,) and hence the plaintiff cannot maintain this action. The said motion was denied by the said justice, and the counsel for the defendant excepted to the said decision. And thereupon the counsel for the defendant, to maintain and prove the said issue on his part, gave in evidence, (here set out the evidence on the part of the defendant, and then as follows:) and the said justice did then and there declare and deliver his opinion to the jury aforesaid, and said that, (here set out the charge on the points excepted to, particularly,) to which said opinion of the said justice, the said counsel for the defendant did then and there, on behalf of the said defendant except, and asked the said justice to charge that (the matter on which defendant's counsel ask to charge should be here set out distinctly.) But the court declined to charge further or otherwise than is above stated. To which decision defendant's counsel excepted.

The jury retired, and afterward returned into court with a verdict for the plaintiff for five hundred dollars damages. And because none of said exceptions, so offered and made to the opinion and decision of the said court do appear upon the record of the said trial, therefore, on the prayer of the defendant, by his counsel, his honor the justice who presided at said trial, and made said decisions, hath settled these exceptions according to the statute in such case made and provided, this fourteenth day of February, 1851.

[No. 81.]

Memorandum of case made at trial.

(Title of action.)

This action came on to be tried before his honor, Ira Harris, one of the justices of this court, at a circuit court held at the city hall, in the city of Albany, for the county of Albany, on the fifteenth day of November, 1851.

A jury was called and sworn. The plaintiff's counsel proved that (here state the facts proved by plaintiff.)

The defendant's counsel then moved for a nonsuit, on the ground that (state the nature of the motion;) which motion the court overruled, and the defendant's counsel excepted.

The defendant then proved that, (state the facts proved by defendant.)

A verdict was taken for the plaintiff for three hundred dollars, subject to the opinion of the court, (on a case to be made, with liberty to turn the same into a special verdict, or bill of exceptions.)

[No. 82.]

Special case prepared for settlement.

(First set out the summons, complaint, answer, and reply, then proceed as follows:)

The issues in the said action came on to be tried before his honor, D. Cady, one of the justices of this court, at a circuit court held at Fonda, in the county of Montgomery, held for the said county, on the tenth day of July, 1851.

A jury was called and sworn (or a trial by jury having been waived.) The plaintiff's counsel proved as follows: that (state the facts proved by plaintiff, objections made by the defendant and the decision of the justice on such objection, whenever such decisions are excepted to.)

The defendant's counsel then proved (state the facts proved by defendant, the questions if any arising on those facts, and the decision of the justice when objected to.)

A verdict was taken by the plaintiff for two hundred dollars, subject to the opinion of the court, on a case to be made with liberty to turn the same into a bill of exceptions or a special verdict.

[No. 83.]

Amendments proposed to case.

(Title of action.)

Amendment first; on page 3, line 12, insert at the end of the paragraph the following: (state what.)

Amendment second; on page 4, strike out the 15, 16, 17, and 18 lines.

Amendment third; on page 5, after line 4, insert the following: (state what,) (and so throughout the case.)

M. P., Esq.: Please take notice that the foregoing are the proposed amendments to the case in the above entitled action as prepared by you for settlement and served on me on the 23d instant.

Fonda, July 28, 1851.

Yours, &c.

P. R., Plaintiff's Att'y.

[No. 84.]

Case to move for a new trial.

(Title of the action.)

This is an action brought by the plaintiff to recover a demand claimed to be due on contract. The complaint, fol. 2, &c., contains the following allegations: (here set forth so much of the complaint as is necessary to present the issue, and the decision to be reversed.)

To which defendant answers as follows: (set forth the allegations denying or avoiding the matter above set forth in the complaint and the allegations in the reply, if any, affecting the same points in issue, then proceed as follows:)

The cause came on to be tried before his honor, Justice Wright, at a circuit court, at the City Hall, in the city of Troy, held for the county of Rensselaer, on the seventh day of August, 1851.

On the trial, M. R. was called as a witness on the part of the plaintiff, and testified that, &c., (state the testimony of the witness.)

On being cross-examined, the witness testified that, (state what.)

The defendant's counsel here moved for a nonsuit, on the ground that, (state the grounds,) which motion was denied by the court, and defendant's counsel excepted.

The defendant then called W. B., and offered to prove that, (state what,) to which plaintiff's counsel objected, which objection was sustained by the court, to which decision defendant's counsel excepted.

The defendant then offered in evidence, (state what documentary evidence was offered,) which evidence was excluded by the court, to which defendant's counsel excepted.

The judge then charged the jury that, (state what,) to which the defendant's counsel excepted.

The jury found a verdict for the plaintiff for one hundred dollars.

[No. 85.]

Certificate of clerk as to filing of notice of lis pendens.

(To be endorsed on the copy of the notice.)

I, R. L., clerk of the county of Albany, do hereby certify, that a notice, of which the within is a copy, was filed in the clerk's office of said county more than forty days since.

Dated July 10, 1851.

R. L., Clerk.

[No. 86.]

Certificate of clerk that pleadings are not filed.

(Title of the action.)

I, B. N., clerk of the county of Oswego, hereby certify, that no complaint, (or answer, or reply) in the above entitled action has been filed in my office.

Oswego, August 15, 1851.

B. N., Clerk.

[No. 87.]

Certificate of sheriff on committitur of defendant.

I, W. B., sheriff of the county of Albany, certify, that E. M., the within defendant, has been committed to, and remains in my custody, by virtue of a *committitur* of him in exoneration of his bail, at the suit of the plaintiff in the within mentioned action. Dated Albany, June 20, 1851.

W. B., Sheriff of
Albany county.

[No. 88.]

Certificate of sheriff of defendant being in custody.

(Title of the action.)

I certify that E. B., the above defendant, is in my custody in the jail of the county of Albany, on a surrender made by his bail in this action, (or on a voluntary surrender,) on the thirteenth day of March last, and after the recovery of judgment in the said action. And I do further certify that there was not delivered to me any writ of execution in the said action within three months from the time of such surrender.

Dated July 1, 1851.

W. B., Sheriff of
Albany county.

[No. 89.]

Certificate of service of summons and complaint.

City and County of Albany, ss:

I, W. B., sheriff of the city and county of Albany, certify, that on the sixth day of October, 1851, I served upon the within named C. D., the within summons, by delivering a copy thereof to the said C. D., the within named defendant, personally, at the city of Albany, together with a copy of the complaint therein mentioned, (of which the within is a copy.)

W. B., Sheriff.

[No. 90.]

Certificate of service of subpœna.

City and County of Albany, ss:

I certify, that on the first day of November, 1851, at Bethlehem, in said county, I subpœnæd the within named L. B., as I am within commanded, by showing to him the within subpœna, and at the same time and place giving to him a subpœna ticket, containing the substance of the said subpœna, and at the same time I paid (or tendered) to him two dollars for his fees.

W. B., Sheriff.
(By R. G., Under Sheriff.)

[No. 91.]

Certificate of deposite of money in lieu of undertaking.

(Title of action.)

I hereby certify, that I have received from the defendant, the sum of eight hundred dollars as a deposit, being the amount mentioned in the order of arrest in this action.

Troy, July 12, 1851.

M. B., Sheriff of
Rensselaer county.

[No. 92.]

Certificate to purchaser of land.

(Title of the action.)

Execution to levy $300, with interest from March 3, 1850, besides sheriff's fees and poundage.

Tested March 5, 1850, returnable in sixty days from its receipt.

I, C. B., sheriff of the county of Albany, do certify, that by virtue of a writ of execution issued in the above action, to me directed and delivered, I have this day sold all the right and title of the said C. D., of, in and to the following described piece of land, (describe the premises sold) together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto M. R., for the sum of two hundred dollars, that being the highest sum bid therefor. And the said M. R. will be entitled to a sheriff's deed for the above described premises at the expiration of fifteen months from this date, unless the same shall be redeemed within that time, pursuant to the statute in such case made and provided, by some person authorised to redeem the same.

Given under my hand this fifth day of June, 1850.

C. B., Sheriff.

[No. 93.]

Commission to examine witnesses.

The People of the State of New York, to M. C., R. V., and M. R., of the city of Boston, State of Massachusetts:

Whereas, it appears to our justices of our supreme court of our State, that H. S. and J. B., of the city of Boston aforesaid, are material witnesses in a certain action now depending in our said supreme court, between C. P., plaintiff, and A. D., defendant, and that the personal attendance of

said witnesses cannot be procured at the trial of the said action: We, in confidence of your prudence and fidelity, have appointed you, and by these presents, do appoint you, or any two of you, commissioners to examine the said witnesses; and therefore we authorise and empower you, or any two of you, at certain days and places, to be by you, or any two of you, for that purpose appointed, diligently to examine the said witnesses, (or such of them as shall be produced before you, or any two of you, and each apart,) on the interrogatories annexed to this commission, on their respective corporal oath first taken before you, or any two of you, and cause the said examination of (each of) said witnesses, to be reduced to writing and signed by the same witness, and by yourselves, or any two of you, and then return the same, annexed to the said commission, unto our supreme court aforesaid, with all convenient speed, inclosed under the seals of you, or any two of you, the said commissioners.

Witness, Ira Harris, Esq., one of the justices of our supreme court, this third day of November, one thousand eight hundred and fifty-one.

R. L., Clerk.

B. L., Attorney.

[No. 94.]

Consent of guardian.

I hereby consent to become guardian ad litem of the above petitioner in the above entitled action.

Buffalo, July 6, 1851.

M. S.

[No. 95.]

Consent of next friend.

I hereby consent to be appointed the next friend of the above petitioner, and to appear for him as such, in the action mentioned in the above petition.

Utica, May 5, 1851. S. B.

[No. 96.]

Deed of sheriff to purchaser under an execution.

To all to whom these presents shall come, I, W. B., sheriff of the county of Albany, send greeting:

Whereas, by virtue of a writ, (or two or more certain writs,) of execution issued out of the supreme court in favor of A. B. against C. D., to the said sheriff directed and delivered, commanding him, that of the goods and chattels of the said C. D. in his county, he should cause to be made, certain moneys in the said writ (or writs) specified, and if sufficient goods of the last named person could not be found, that then he should cause the amount of such judgment to be made of the lands, tenements, real estate, and chattels real, whereof the said last named person was seized at a certain time in the said writ specified, as on reference to the said writ now of record in said court will more fully appear. And, whereas, because sufficient goods and chattels of the said last named person in the said writ could not be found, whereof, he, the said sheriff, could cause to be made the moneys specified in the said writ, he, the said sheriff, did, in obedience to the said command, levy on, take and seize all the estate, right, title and interest of the said last named person of, in and to the lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances, and did on the twentieth day of March, one thousand eight hundred and fifty, sell the said premises at public vendue, in the rotunda of the Merchants' Exchange, in the city of Albany, in the county of Albany, he having first given notice of the time and place of such sale, by advertising the same according to law; at which sale the said premises were struck off and sold to W. F., for the sum of eight hundred dollars, he, the said W. F., being the highest bidder, and that being the highest sum bidden for the same. Whereupon, the said sheriff, after receiving from the said purchaser the said sum of money so bidden as aforesaid, gave to him such certificate as is by law directed to be given,

and a certificate of such sale was duly filed in the office of the clerk of the supreme court, in the county of Albany. And, whereas, the fifteen months after such sale, and the giving and filing of such certificate thereof have expired, without any redemption of the said premises having been made. (If the case require, here insert the transfer of the sheriff's certificate to the present owner.)

Now, this indenture witnesseth, that I, W. B., the sheriff, as aforesaid, by virtue of the said writ, and in pursuance of the statute, in such case made and provided, for, and in consideration of the sum of money above mentioned, to me in hand paid, as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, conveyed and confirmed, and by these presents, do grant, bargain, sell, release, assign, convey and confirm unto the said W. F., his heirs or assigns, all the estate, right, title and interest of the said person, against whom the said writ of execution has been issued as aforesaid, whereof he was seized or possessed on the the third day of January, one thousand eight hundred and fifty, (the day mentioned in the writ,) or any time afterwards, in, and to all that (describe the real estate conveyed,) together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining: to have and to hold the said above mentioned and described premises, with the appurtenances, unto the said W. F., his heirs and assigns forever, as fully and absolutely as I, W. B., the sheriff, aforesaid, may, can, or ought to, by virtue of the said writ, and of the statute in such case made and provided, grant, bargain, sell, release, assign, convey and confirm the same.

In witness whereof, I, the said sheriff, have hereunto set my hand and seal, the day and year first above written.

Sealed and delivered in presence of } W. B., Sheriff. [L. s.]

[No. 97.]

Sheriff's deed in partition where sale is ordered, or on sale of mortgaged premises.

This indenture, made this fourth day of June, 1851, between W. B., sheriff of the county of Albany, of the first part, and P. K., of the city of Albany, of the second part:

Whereas, at a (special) term of the supreme court, held for the State of New York, at the city hall in the city of Albany, on the third day of January, 1851, before Ira Harris, Esq., one of the Justices of said court, it was, among other things, ordered, adjudged and decreed by the said court, between A. B., plaintiff, and C. D., F. E., and G. H., defendants, that all and singular, the premises mentioned in the complaint in said action, and hereinafter described, together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, should be sold at public auction in the county of Albany, where such premises are situated, by and under the direction of the sheriff, residing in said county, after such sheriff had given the public notice of the time and place specified in such order and required by law, and the rules and practice of said court. And, whereas, the said sheriff, party of the first part, to these presents, in pursuance of the said order, judgment and decree of the said court, did, on the first day of June, 1851, sell at public auction in the rotunda of the Merchants' Exchange, in the city of Albany, the premises mentioned in the said order, after having given public notice of the time and place of such sale, and a brief description of the said premises in conformity with the order aforesaid. And, whereas, at said sale the said premises were struck off to, and purchased by the said party of the second part to these presents, at and for the sum of six hundred dollars, that being the highest sum bidden for the same.

Now, therefore, this indenture witnesseth, that the said party of the first part, sheriff as aforesaid, in order to carry into effect the sale so made in pursuance of the said decree of said court, and also by virtue of the statute in such case

made and provided, and in consideration of the sum of six hundred dollars, to him in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, (insert description of land) together with all and singular the rights, titles, hereditaments and appurtenances thereunto belonging, or in any wise appertaining. To have and to hold all and singular the premises above mentioned and described, unto the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

W. B., Sheriff. [L. S.]

[No. 98.]

Exoneretur—(to be endorsed on the original bail piece.)

The within defendant having, on his own prayer, (or on the prayer of) and for the indemnity of his manucaptors, been committed to the sheriff of Albany, at the suit of the plaintiff on the within plea, the said manucaptors of their recognizance, within contained, are fully exonerated.

[No. 99.]

Execution for interlocutory costs.

The People of the State of New York, to the sheriff of the county of Albany :

An order was rendered in the supreme court of the State of New York, in favor of M. C., plaintiff, against G. H., de-

fendant, for the sum of ten dollars, on the sixth day of October, one thousand eight hundred and fifty-one, and filed in the clerk's office of the city and county of New York.

There is now actually due on said order the sum of ten dollars, and interest thereon from Oct. 6, 1851.

You are therefore required to satisfy the order out of the personal property belonging to the defendant in your county.

Dated May 26, 1851.

A. B., Plff's. Atty.

(Endorsed.)

Title of the action. Execution to Albany county, A. B., Plff's Atty. Levy $10, with interest from the 6th of Oct., 1851, and return this execution within sixty days after its receipt by you to the New York county clerk's office.

A. B., Plff's Attorney.

[No. 100.]

Execution on judgment for money.

The People of the State of New York, to the sheriff of the county of Oswego:

A judgment was rendered in the supreme court of the State of New York, in favor of A. B., plaintiff, against C. D., and E. F., defendants, for five hundred dollars and twenty cents, and ten dollars and fifty cents costs; and filed in Albany county on the third day of November, one thousand eight hundred and fifty-one, and docketed in the said county of Oswego on the fifth day of November, one thousand eight hundred and fifty-one, at ten o'clock, A. M. There is now actually due on said judgment, five hundred and ten dollars and seventy cents, with interest from Nov. 3, 1851.

You are therefore required to satisfy the judgment out of the personal property of the defendants; or if sufficient cannot be found, then out of the real property in your county belonging to the defendants, (or either of them,) on the

fifth day of November, one thousand eight hundred and fifty one, or at any time thereafter.

Nov. 7, 1851.

G. H., Plff's Atty.

(Endorse as on the preceding.)

[No. 101.]

Execution on judgment for money—(another form.)

The People of the State of New York to the sheriff of the county of Yates, greeting:

Whereas, judgment was rendered on the fifth day of June one thousand eight hundred and fifty-two, in an action in the Supreme Court, between M. V., plaintiff, and O. P., defendant, in favor of said plaintiff, against said defendant, for the sum of five hundred dollars, as appears by the judgment roll, filed in the office of the Clerk of the county of Wayne. And whereas, said judgment was docketed in your county on the tenth day of June in the year one thousand eight hundred and fifty-two, and the sum of five hundred dollars, and interest, from the said fifth day of June, is now actually due thereon. Therefore we command you, that you satisfy the said judgment out of the personal property of said defendant in your county, or if sufficient personal property cannot be found, then out of the real property in your county belonging to said defendant (or either of them) on the day when the said judgment was so docketed in your county, or at any time thereafter, and return this execution within sixty days after its receipt by you, to the Clerk of the county of Wayne.

Dated, July 1, 1852.

A. B., Plaintiff's Att'y.

(Endorse as in last form.)

[No. 102.]

Execution against an executor.

The People of the State of New York, to the sheriff of the county of Greene:

A judgment was rendered in the supreme court of the State of New York, in favor of G. H., plaintiff, against L. M., as executor of the last will and testament of B. P., late of the county of Greene, deceased, (or administrator of all and singular, the goods, chattels and credits which were of B. P., late of the county of Greene, deceased, at the time of his death, the said B. P. having died intestate,) defendant, for the sum of four hundred dollars, recovery, and twenty-five dollars, costs, and filed and docketed in Greene county on the tenth day of July one thousand eight hundred and fifty-one, at two o'clock, P. M. There is now actually due on said judgment four hundred and twenty-five dollars, with interest, from July 10, 1851.

You are therefore required to satisfy the judgment out of the personal property of the said B. P. in the hands of the said L. M. in your county.

July 12, 1851.

E. C., Plaintiff's Att'y.

(Endorse as in last form.)

[No. 103.]

Execution against the person.

The People of the State of New York, to the sheriff of the county of Saratoga, greeting:

A judgment was rendered in the supreme court of the State of New York in favor of M. B., plaintiff, against N. A., defendant, for one hundred dollars, damages, and thirty-five dollars, costs, and filed and docketed in your county on the tenth day of August one thousand eight hundred and fifty-one. There is now actually due on said judgment one hundred and thirty-five dollars, with interest thereon from

August 10, 1851. An execution having been issued to the Sheriff of the proper county against the property of the said judgment debtor and returned wholly unsatisfied: You are therefore required to arrest the said N. A., judgment debtor as aforesaid, and commit him to the jail in your county until he shall pay the judgment, or be discharged according to law.

September 5, 1851.

R. S., Plaintiff's Att'y.

[No. 104.]

Execution for the delivery of possession of property.

The People of the State of New York, to the sheriff of the county of Essex:

Whereas, judgment was rendered in the supreme court of the State of New York in favor of A. L., plaintiff, against R. S. defendant, for the delivery to the said A. L. of the possession of certain real (or personal) property, (here describe property as in the judgment,) as appears to us by the said judgment filed and docketed in the office of the clerk in your county, on the fourth day of October, one thousand eight hundred and fifty-one.

You are hereby required to deliver to the said A. L., plaintiff, aforesaid, the possession of the said real (or personal) property, and return this execution within sixty days after its receipt by you, to the clerk of the county of Essex.

Oct. 20, 1851.

R. G., Plaintiff's Att'y.

[No. 105.]

Execution for the delivery of possession of property, and for damages.

To the sheriff of the county of Chenango:

Whereas, judgment was rendered in the supreme court of the State of New York, in favor of Z. B., plaintiff, against

C. M., defendant, for the delivery to the said plaintiff of the possession of certain real (or personal) property, to wit: (here set forth the property as in the judgment,) and also for five hundred dollars damages and costs, as appears to us by the judgment roll duly filed, and the judgment docketed in the office of the clerk of the county of Chenango, on the nineteenth day of October, one thousand eight hundred and fifty-one. There is actually due upon the said judgment five hundred dollars, and interest thereon from October 19, 1851.

You are, therefore, hereby required to deliver to the said Z. B. the possession of the said real (or personal) property, and also to satisfy the said damages and costs out of the personal property of the said C. M., defendant, as aforesaid; or if sufficient cannot be found, then out of the real property in your county, belonging to the defendant, on the nineteenth day of October, one thousand eight hundred and fifty-one, or at any time thereafter.

October 20, 1851.

I. K., Plaintiff's Att'y.

[No. 106.]

Execution against property after affirmance of judgment.

The People of the State of New York, to the sheriff of the county of Albany:

Whereas, judgment was rendered on the 20th day of March, 1851, in an action in the supreme court between J. M., plaintiff, and S. K., defendant, in favor of the said plaintiff (or defendant) for the sum of one hundred dollars, as appears to us by the judgment roll filed in the office of the clerk of the county of Albany; and, whereas, the said defendant (or plaintiff) did appeal from the said judgment to the supreme court at a general term thereof, (or to the court of appeals) and the said judgment being by the said supreme court (or court of appeals) in all things affirmed, it

was adjudged by the said court that the said plaintiff (or defendant) recover from the said defendant (or plaintiff) the sum of ninety dollars, for his costs and disbursments upon such appeal, as appears to us from the judgment roll and proceedings thereon, (in the said court of appeals, remitted into and) filed in the said supreme court, upon which said judgment there is now actually due the sum of one hundred and ninety-four dollars and interest thereon from the 16th day of July, 1851.

You are therefore required to satisfy the judgment out of the personal property of the said defendant (or plaintiff;) or if sufficient cannot be found, then out of the real property in your county, belonging to the said defendant (or plaintiff) on the sixteenth day of July, one thousand eight hundred and fifty-one, or at any time thereafter.

Dated July 16, 1851.

O. M., Paintiff's
(or Defendant's) Att'y.

(Endorsed title of the action.)

Execution to Albany county, O. M., plaintiff's (or defendant's) attorney. Levy $194, with interest from July 16, 1851, and return this execution within sixty days after its receipt by you to the Albany county clerk's office.

O. M., Plaintiff's
(or Defendant's) Att'y.

[No. 107.]

Execution against property after reversal on appeal.

The People of the State of New York, to the sheriff of the county of Fulton:

Whereas, M. F., did appeal to the general term of the supreme court (or to the court of appeals) from a judgment rendered in the supreme court between N. G., plaintiff, and M. F., defendant, in favor of the said plaintiff against the said defendant, for five hundred dollars, and, whereas, the

judgment was, by the said appellate court, in all things reversed, it was adjudged by the said appellate court that the said defendant recover from the said plaintiff the sum of one hundred dollars for his costs and disbursements upon such appeal, as appears to us by the judgment roll and proceedings (remitted and) filed in the said supreme court on the sixth day of November, one thousand eight hundred and fifty-one, upon which said judgment there is now actually due, (conclude and endorse as in the previous form.)

[No. 108.]

Habeas corpus ad testificandum.

The people of the State of New York, to the sheriff of the county of Albany:

We command you that you have the body of N. G., detained in our prison under your custody, as it is said, under safe and secure conduct, before our supreme court, at a circuit court to be held at the city hall in the city of Albany, in and for the county of Albany, on the first Monday of April next, to testify and give evidence in a certain action now pending in our said supreme court, then and there to be tried between K. L., plaintiff, and M. B., defendant, on the part of the plaintiff (or defendant,) and immediately after the said N. G. shall then and there have given his testimony in the said action, that you return him to our said prison under safe and secure conduct. And that you have then there this writ.

Witness, Ira Harris, Esq., one of the justices of our supreme court, the 20th day of March, 1851.

R. L., Clerk.

A. B., Attorney.

(Endorsed.)

Allowed March 20, 1851.

IRA HARRIS.

[No. 109.]

Preliminary Injunction.

(Title of the action.)

It appearing from the complaint in this action, duly verified, and from the affidavits of E. J. and B. E., that the said plaintiff is entitled to the relief demanded in the complaint, and that such relief consists in restraining the said defendant (here set forth the matter prohibited to be done.)

Now, therefore, in consideration of the premises, and of the particular matters in the said complaint and affidavits set forth, I do hereby command and strictly enjoin the said defendant, C. M., and all his councillors, attorneys, solicitors and agents, and all others acting in aid or assistance of him and each and every of them, under the penalties by law prescribed, that he and they, and each of them, do absolutely resist and refrain from (insert the matter prohibited to be done) until this court shall have made further order thereupon. July 1, 1851.

A. J. PARKER.

[No. 110.]

Another form of Preliminary Injunction.

The People of the State of New York, to M. P., and to his councillors, attorneys, solicitors and agents, and each and every of them, greeting:

Whereas, it has been represented to us in our supreme court, on the part of A. B., complainant, that he has lately exhibited his complaint in our said court, before the justices thereof, against you, the said M. P., to be relieved touching the matters therein complained of; in which it is stated among other things, that you are combining and confederating with others, to injure the said plaintiff, touching the matters set forth in the said complaint, and that your actings and doings in the premises are contrary to equity and good conscience. We, therefore, in consideration thereof, and of the particular matters in the said complaint set forth, do strictly command you, the said M. P., and the persons before mentioned,

and each and every of you, under the penalty of ten thousand dollars, to be levied upon your lands, goods and chattels, to our use, that you do absolutely resist and refrain from (insert the matter prohibited to be done) until our said court shall have made further order herein.

Witness, Ira Harris, Esq., one of the justices of this court, the second day of July, 1851.

[L. S.] R. L., Clerk.

(Endorsed "By the court." R. L., Clerk.)

[No. 111.]

Perpetual injunction.

The People of the State of New York, to C. D., and to his councillors, attorneys, solicitors and agents, and each and every of them, greeting:

Whereas, it has been represented to us in our supreme court, on the part of A. B., plaintiff, that he has lately exhibited his complaint in our said court against you, the said C. D., for relief, touching the matters in the said complaint. And whereas, by a judgment or decree, made upon the hearing of the said action, on the third day of July last past, it was ordered and decreed by our said court, among other things, that an injunction should issue under the seal of the said court, to restrain you, the said C. D., from (here set forth the matter enjoined.) We do, therefore, in execution of the said decree, hereby firmly enjoin and command you, and every of you, that from and immediately after being served with this our writ or notice thereof, you, or any of you, do not prosecute, (here set forth the matter enjoined;) but that you, and every of you, do from henceforth entirely cease and desist; and this you shall in no wise omit.

Witness, Ira Harris, one of the justices of the supreme court, at Albany, this tenth day of December, one thousand eight hundred and fifty-one.

[L. S.] L. R., Clerk.

(Endorsed. "By the court." L. R., Clerk.)

[No. 112.]

Interrogatories to examine witness on commission.

(Title of action.)

Interrogatories to be administered to A. B., of Springfield, in the State of Massachusetts, a witness to be produced, sworn and examined under, and by virtue of the annexed commission, before M. C., residing in said Springfield, the commissioner therein named, in a certain action now pending, and at issue in the supreme court of the State of New York, wherein D. E. is plaintiff, and G. R. is defendant, on the part and behalf of the said defendant (or plaintiff.)

First interrogatory.—What is your name, age, occupation and place of residence?

Second interrogatory.—Do you know the parties, plaintiff and defendant in this action, or either, and which of them; and how long have you known them, or either, and which of them?

Third interrogatory.—(If it relate to a paper to be proved.) Look upon the paper, writing, (or deed) now produced and shown to you, marked A. Was, or was not such paper, writing, (or deed) executed in your presence? If yea, by whom, when, and where?

(Proceed with other interrogatories according to the state of the action.)

Lastly.—Do you know any other matter or thing touching the matters for which this action is brought, (or defended,) that may tend to the benefit or advantage of the said plaintiff (or defendant)? If yea, declare the same fully and at large, as if you had been particularly interrogated thereto.

M. P., Plaintiff's
(or Defendant's) Att'y.

Cross-interrogatories to the above.

Interrogatories to be administered by way of cross-examination to A. B., of Springfield, &c., (as in the above form.)

First cross-interrogatory.—Do you, &c. (Proceeding with each cross-interrogatory as in last form.)

G. I., Defendant's
(or Plaintiff's) Att'y.

[No. 113.]

Judgment for plaintiff for want of an answer or demurrer.

SUPREME COURT.

A. B. *agt.* C. D. } Judgment, Nov. 5, 1851.

The summons (with a copy of the complaint) in this action having been personally served on C. D., the defendant, more than twenty days previous to this date, and no copy of an answer or demurrer to the complaint having been served on the plaintiff's attorney, as required by the summons: Now on motion of M. R., plaintiff's attorney, it is hereby adjudged that A. B., the plaintiff, recover of C. D., the defendant, the sum of one hundred dollars, with ten dollars costs and disbursements, amounting in the whole to one hundred and ten dollars.

R. L., Clerk.

[No. 114.]

Judgment for plaintiff for want of an answer or demurrer where only a part of defendants served.

(Title of action.)

Judgment, Nov. 6, 1851.

The summons (with a copy complaint) in this action having been personally served on C. D., one of the defendants, more than twenty days previous to this date, and no copy of an answer or demurrer to the complaint having been served on the plaintiff's attorney, as required by the summons, and it is here suggested that service of summons (and complaint) has not been made upon the defendant, G. F.: Now on motion of M. R., &c., (proceed as in the last form to the end.)

[No. 115.]

Judgment on application to the court.

At a special term (or circuit) of the supreme court for the State of New York, held at the City Hall in the city of Albany, on the fourth day of November, 1851.

Present, Hon. IRA HARRIS, Justice.

A. B. } *agt.* C. D. }

The summons (with a copy of the complaint) having been personally served on C. D., the defendant in this action, on the first day of October, 1851, and on reading and filing the affidavit of M. R., plaintiff's attorney, showing that defendant has not appeared or demurred, and that no copy of an answer or demurrer to the complaint in this action has been served on the plaintiff's attorney, as required by the summons: Now on motion of M. R., plaintiff's attorney, it is hereby adjudged that A. B., the plaintiff, recover of C. D., the defendant, the sum of one thousand dollars with fifteen dollars and fifty cents costs and disbursements, amounting to one thousand fifteen dollars and fifty cents costs.

R. L., Clerk.

[No. 116.]

Judgment for plaintiff on issue of fact.

(Title of action.)

Judgment, August, 10, 1851.

This action having been tried on the issue of fact, and the jury having found a verdict for the plaintiff for the sum of one thousand dollars: Now on motion of M. R., plaintiff's attorney, it is adjudged by the said court that the plaintiff recover of the defendant the said sum of one thousand dollars, together with seventy-five dollars and twenty-five cents costs and disbursements, amounting to one thousand seventy-five dollars and twenty-five cents.

R. L., Clerk.

[No. 117.]

Judgment for defendant.

(Title of action.)

Judgment, Sept. 3, 1851.

This action having been tried, and the jury having found a verdict in favor of the defendant: Now, on motion of R. M., defendant's attorney, it is adjudged by the court that the said defendant recover of the said plaintiff the sum of fifty dollars for his costs and disbursements, which he has wrongfully sustained in this action.

R. L. Clerk.

[No. 118.]

Judgment on report of referees.

(Title of action.)

Judgment, October 5, 1851.

This action having been referred to A. D., to hear and determine the same, and his report having been filed, whereby he finds to be due from the defendant to the plaintiff, the sum of eighty dollars: Now, on motion of M. R., plaintiff's attorney, &c., (as is the usual form to the end.)

[No. 119.]

Judgment after nonsuit.

(Title of action.)

Judgment, July 6, 1851.

This action being at issue on the facts, and having come on to be tried, and the plaintiff voluntarily submitted to a nonsuit, (or having been nonsuited by the court:) Now, on motion of R. M., defendant's attorney, it is hereby adjudged by the said court, that the said defendant recover of the plaintiff the sum of forty-five dollars, for his costs and disbursements in this action.

R. L. Clerk.

[No. 120.]

Judgment on dismissal of complaint.

(Title of action.)

Judgment, October 8, 1851.

This action having been called in its order on the calendar, and the plaintiff not coming, but making default thereof, and the complaint having been dismissed, together with the costs to the defendant: Now, on motion of R. M., &c., (as in the last form to the end.)

[No. 121.]

Judgment on inquest.

(Title of action.)

Judgment, September 9, 1851.

This action having been moved out of its order on the calendar, and the defendant having been called, came not, but made default, and a jury trial having been waived, and the issue in said action having been tried by the court, and the decision of the judge filed, whereby he finds for the plaintiff, for two hundred dollars: Now, on motion of M. R., plaintiff's attorney, it is adjudged that the said plaintiff recover of the defendant the sum of two hundred dollars, together with forty-five dollars costs and disbursements, amounting to two hundred and forty-five dollars.

R. L., Clerk.

[No. 122.]

Judgment of affirmance on appeal.

(Title of action.)

Judgment, December 10, 1851.

This action having been brought to a hearing upon an appeal, from a judgment entered in the county (court) of Schenectady (county,) on the third day of June, 1851, in

favor of the above named plaintiff, (or defendant,) against the above named defendant, (or plaintiff,) for ninety-five dollars (damages,) costs and disbursements, and the decision of the court upon the said appeal having been filed, whereby the aforesaid judgment is in all things * affirmed. Now, on motion of M. R., plaintiff's (or defendant's) attorney, it is adjudged that the said judgment be, and the same is hereby in all things affirmed, and that the plaintiff (or defendant) recover of the defendant (or plaintiff) the said sum of ninety-five dollars, with sixty-five dollars costs, disbursements and interest, amounting in the whole to one hundred and fifty dollars.

R. L., Clerk.

[No. 123.]

Judgment on reversal.

(Same as above to the * then add) reversed. Now on motion of R. M., defendant's (or plaintiff's) attorney, it is adjudged that the said judgment be, and the same hereby is in all things reversed, and that the said defendant (or plaintiff) recover of the plaintiff (or defendant) the sum of fifty dollars for his costs and disbursements, upon said appeal.

R. L., Clerk.

[No. 124.]

Judgment (interlocutory) for an account.

(Title of the action.)

Judgment, Dec. 1, 1851.

This action having been brought on to be heard, and the court having duly considered the pleadings, proofs and arguments: it is ordered and adjudged that it be referred to A. B., of the city of Troy, as referee, to take a mutual account of all dealings and transactions between the plaintiff and defendant in this action, for the better clearing of which account, the par-

ties are directed to produce before the said referee, upon oath, all deeds, books, papers and writings in their custody or power relating thereto, and are to be examined as the said referee shall direct, who, in taking the said account, is to make unto the parties all just allowance; and what upon the balance of the said account shall appear to be due from either party to the other, is to be paid as the said referee shall direct. And this court doth reserve the consideration of the costs of this action, and of all further directions, until after the said referee shall have made his report; when either party is to be at liberty to apply to the court, as occasion shall require.

R. L., Clerk.

[No. 125.]

Judgment for specific performance.

(Title of action.)

Judgment, December 6, 1851.

This action having been brought to a hearing (for further directions on the report of P. E., the referee to whom the same stood referred, and the said report, together with the pleadings and proofs having been read) and the court having duly considered the said (referee's report,) pleadings, proofs and arguments, and it appearing to this court that the agreements in the said complaint mentioned can be fully performed: it is thereupon ordered, adjudged and determined, that the said agreement so made and entered into between the plaintiff and defendant, and duly proven in this action, be specifically performed And it is further ordered and adjudged that the said plaintiff do (here set forth what is to be done by the plaintiff.) And it is further ordered and adjudged that the said defendant do (here set forth what is to be done by the defendant.) And it is further ordered that the said plaintiff recover of the defendant one hundred dollars damages, and fifty dollars costs and disbursements, amounting to one hundred and fifty dollars.

R. L., Clerk.

[No. 126.]

Judgment of sale in foreclosure.

(Title of action.)

Judgment, Dec. 20, 1851.

This action having been this day brought on to be heard upon the complaint filed herein, (on the general answer of the infant defendants,) and upon the report of A. W., Esq., a referee duly appointed by this court, which report bears date the 16th day of November, 1851, and was made in pursuance of an order of this court heretofore made in this action, referring it to the said A. W. to compute the amount due the plaintiff on the bond and mortgage mentioned, and set forth in said complaint.

On reading and filing the report of the referee named in the order of reference, by which report it appears that four hundred dollars was due thereon at the date of said report: And on motion of M. A., plaintiff's attorney, it is adjudged that the mortgaged premises described in the complaint in this action as hereinafter set forth, or so much thereof as may be necessary, and as may be sold separately without prejudice to the interest of the owner thereof, be sold at public auction, in the county of Albany, by the sheriff of said county; that the said sheriff give public notice of the time and place according to the law and the practice of this court; that either or any of the parties to this action may purchase at such sale; that the said sheriff execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the moneys arising from such sale, after deducting the amount of his fees and expenses on such sale, and any lien or liens upon said premises so sold at the time of such sale for taxes or assessments, the said sheriff pay to the plaintiff, or his attorney, the sum of eighty dollars adjudged to the plaintiff for costs and charges in this action, with interest from the date hereof, and also the amount so reported due as aforesaid, together with the legal interest thereon from the date of the said report, or so much thereof as the purchase money of the mortgaged premises will pay

of the same, and take a receipt therefor and file it with his report of sale, and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order of this court; that he make a report of such sale, and file it with the clerk of this court with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount so reported due the plaintiff, with the interest and costs so as aforesaid, the said sheriff specify the amount of such insufficiency in his report of sale, and that the defendant, J. V., pay the same to the plaintiff, and that the purchaser or purchasers be let into possession on production of the sheriff's deed, and a certified copy of the order confirming the report of sale.

And it is further adjudged that the defendants, and all persons claiming under them, or any or either of them, after the filing of such notice of pendency of this action, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

The following is a description of the mortgaged premises: All that certain lot (here insert description of the premises.)

R. L., Clerk.

[No. 127.]

Judgment for sale in foreclosure, part not due, and premises can be sold in parcels.

(Title of action.)

Judgment, Dec. 2, 1851.

This action having this day been brought on to be heard upon the complaint filed herein, (on the general answer of the infant defendants,) and upon the report of A. W., Esq., a referee duly appointed by this court, which report bears date the 30th day of November, 1851, and was made in pursuance of an order of this court heretofore made in this action, referring it to the said A. W., to compute the amount

actually due to the plaintiff on the bond and mortgage mentioned in the complaint; also, the amount secured by and unpaid upon said bond and mortgage, with interest thereon to the date of such report; and also to ascertain the situation of said mortgaged premises, and whether the same can be sold in parcels without injury to the interests of the parties; and if such referee would be of the opinion that the premises cannot be sold in parcels without injury to the interests of the parties, then that he report his reasons for such opinion:

On reading and filing said report, from which it appears that there was actually due to the said plaintiff, at the date of said report, for said principal and interest, the sum of five hundred dollars, and the amount secured by and unpaid upon said bond and mortgage with interest thereon to the date of said report, is the sum of one thousand dollars; and that said premises can be sold in parcels without injury to the interests of the parties: And on motion of M. R., plaintiff's attorney, it is ordered and adjudged that so much of the said mortgaged premises, mentioned in the complaint in this action and hereinafter described, as may be sufficient to raise the amount so reported as actually due to the plaintiff for the principal and interest and the costs in this action, and which may be sold separately, without material injury to the parties interested, be sold at public auction in the county of Albany, by the sheriff of said county; that the said sheriff give public notice of the time and place of such sale, according to the law and practice of this court, and that the plaintiff or any of the parties in this action may become the purchaser or purchasers at such sale; that said sheriff execute, to the purchaser or purchasers, a deed or deeds of the premises sold; that out of the money arising from such sale, after deducting the amount of his fees and expenses on such sale, and any lien or liens upon said premises so sold at the time of such sale, for taxes or assessments, the said sheriff pay to the said plaintiff, or his attorney, the sum of eighty dollars, adjudged to the plaintiff for costs and charges in this action, with interest from the

date hereof, and also the amount so reported as actually due as aforesaid, together with legal interest thereon from the date of said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same; and that the sheriff take receipts for the amounts so paid, and file the same with his report, and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order of this court. And it is further ordered and adjudged, that the defendants and all persons claiming or to claim from or under them or any or either of them after the filing of such notice of pendency of this action, be forever barred and foreclosed of all right, title, interest and equity of redemption to as much of said mortgaged premises as shall be sold, and every part and parcel thereof. And it is further adjudged, that the purchaser or purchasers of said mortgaged premises at such sale, be let into possession of such parts thereof as shall be purchased by them respectively, and that any of the parties in this action who may be in possession of said premises, or any part thereof, which may be sold, and any person who since the commencement of this action, has come into possession of them or either of them, deliver possession thereof to such purchaser or purchasers, on production of the sheriff's deed for such premises, and a certified copy of the order confirming the report of such sale. And it is further adjudged, that if the moneys arising from said sale of the whole of said premises shall be insufficient to pay the amount so reported as actually due to the plaintiff with the interest and cost and expenses of sale as aforesaid, the said sheriff specify the amount of such deficiency in his report of sale, and that the defendant, C. D., pay the same to the plaintiff with interest thereon, and that the plaintiff have execution therefor. And it is further adjudged, that said plaintiff be at liberty at any time hereafter, as any instalment of principal or interest shall become due on said bond and mortgage, to apply to this court on the foot of this judgment and obtain a report of the amount which shall then be due, to the end, that on the coming in and confirmation

of such report, a judgment may be made for a sale of the residue of said premises not sold under this judgment to satisfy the amount which shall then be due, with interest and the costs of such report and sale. And in case said premises shall all be sold under this judgment to ratify the amount now actually due, with interest and costs, it is then further ordered, that the said plaintiff be at liberty at any time thereafter when any future instalment of principle or interest shall fall due upon said bond and mortgage, to apply to this court for an execution against said defendant, C. D., who is personally liable for the payment of the debt secured by the said mortgage, for the amount which shall then be due, with interest and the costs of such application.

The following is a description of the premises authorized to be sold under and by virtue of this judgment, viz: All that certain, &c., (insert description of the premises.)

R. L., Clerk.

[No. 128.]

Judgment of sale in partition.

(Title of action.)

Judgment, September 8, 1851.

This action having been brought on to be tried on the complaint therein, the answer of T. B. S., one of the defendants, the general answer of the infant defendants thereto, the other defendants not having appeared or answered said complaint, and upon the report of C. P., referee, duly appointed in this action, which report bears date the 25th day of August, 1851, and after hearing counsel on the part of the plaintiff, and of the defendants who have appeared herein, and due deliberation being thereupon had, this court doth order and adjudge that the said report be, and the same is hereby approved, certified and confirmed.

And it is further ordered and adjudged that the parties to this action, except the defendants, A. M. S., widow of S.

S. deceased, are seized of, and entitled to the lands, tenements and hereditaments mentioned in the complaint in this action, and hereinafter described, with the appurtenances as tenants in common thereof in fee simple, and that the respective rights and interests of the said parties, plaintiffs and defendants therein, are such as are ascertained and stated by the said referee in his report aforesaid; that is to say:

The plaintiffs W. H. B., and A., his wife, are in right of the said A., seized in fee simple, and well entitled to the one-sixth part of the said lands and tenements. The defendant, T. B. S., is seized in fee simple, and well entitled to the one-sixth part of the said lands and tenements, subject, however, to a mortgage thereon given to, and now held by S. G., bearing date August 7, 1847, and on which there is unpaid the sum of seven hundred dollars, with interest from the first day of March, 1849.

The defendant E. L. and S., his wife, are in right of the said S., seized in fee simple, and well entitled to the one-sixth part of the said lands and tenements.

The defendant J. S. is seized in fee simple, and well entitled to the one-sixth part of the said lands and tenements, subject, however, to a mortgage executed by the said J. S., and A., his wife, to G. B. J., of the city of Albany, bearing date the third day of August, 1849, and given to secure the payment of the sum of one hundred and twenty-five dollars, with interest, on demand, the whole of which is still due and unpaid.

The defendant, W. K., and S., his wife, in right of the said S., a child of W. S., jr., deceased, are seized in fee simple, and well entitled to the one-twelfth part of the said lands and tenements, subject to the dower right of the defendant, A. M. S., mother of the said S. and widow of W. S. jr., deceased.

The defendant, S. S., the only other child of the said W. S., jr., deceased, is seized in fee simple, and well entitled to the one-twelfth part of the said lands and tenements, subject to the right of dower of the said defendant, A. M. S., the mother of said S., and widow of the said W. S. jr., deceased.

That the said defendant, A. M. S., widow of the said W. S., jr., deceased, is entitled to her right of dower in the one-sixth part of the said lands and tenements, of which the said W. K., and S., his wife, and the said S. T. are so s ized as aforesaid.

The defendants, R. G. S. and S. N. S., the only children of S. H. S., deceased, are each seized in fee simple, and well entitled to one-twelfth part of said lands and tenements, subject to the right of dower of their mother, S. S., widow of the said S. H. S., deceased, and who has a right of dower in each of said twelfth parts.

And it is further ordered and adjudged, that all and singular the premises mentioned in the complaint in this action, and described as follows: (insert description of premises) be sold for cash at public auction in the county of Albany, by and under the direction of C. P., of said county, the referee above named; that the said several lots be sold separately, or in such portions as to the said referee may seem most for the interest of the parties interested therein; that the said referee give six weeks' previous notice of the time and place of such sale, in one of the public newspapers printed in said county where the said premises are situated, and in such other manner as is required by law, and the rules and practice of this court; and that the plaintiffs, or any of the parties to this action may become the purchaser or purchasers thereof. That the said referee, forthwith after said sale, make report thereof to this court. And after his report of sale shall have been duly confirmed, and the judgment of this court entered, that then he execute a deed or deeds of the said premises, to the purchaser or purchasers at the said sale, on their complying with the conditions upon which the deeds are to be delivered; and that such sale and conveyance be valid and effectual forever. And it is further ordered and adjudged, that the costs of the parties to this action be first apportioned between the said several parcels of land and premises rateably, and paid out of the proceeds of the sale thereof, in proportion to the sums for which they respectively sell: the same to be paid to the respective attornies of the parties.

And that the said referee in like manner, retain out of the proceeds of the sale, the fees, commissions and disbursements to which he is entitled on such sale. That the said referee do pay and discharge out of the proceeds, all taxes, charges and assessments which may be a lien upon the said premises, or any part thereof; and if the same are upon a part only, then that such referee pay the same out of the proceeds of such part, and specify the same in his final report. That the said referee pay to S. G., the sum of seven hundred dollars, with interest thereon from the first day of March, 1849, out of the share or proportion of the proceeds arising from said sale of the defendant, T. B. S., that being the amount of the specific lien or mortgage upon his sixth part of the lands and premises aforesaid. That the said referee also pay to G. B. J., the sum of one hundred and twenty-five dollars, with interest from the third day of August, 1849, out of the share or interest of J. S., in the proceeds arising from the sale of the premises aforesaid, that being the amount of the specific lien or mortgage on his one-sixth part of the said premises.

And it is further ordered and adjudged that the said referee ascertain and report whether the defendants A. M. S., widow of W. S., jr., deceased, and S. S., widow of S. H. S., deceased, are willing to accept in lieu and instead of their dower interest in the premises aforesaid, a sum in gross in satisfaction thereof out of the net proceeds of the respective one-sixth part of the said premises, whereof their respective husbands died seized, according to their rights as ascertained in the report of the said referee, and what would be a reasonable satisfaction for their respective interests on the the principles applicable to life annuities; and if the said A. M. S. and S. S. consent, or if either of them consent to accept such gross sum, that such referee pay the same to them, or such one of them as shall give such consent, upon their executing, acknowledging and delivering to the said referee a release, to be approved of by said referee, of all their respective right, title and interest in the premises, and every part thereof. But if they, or either of them, refuse to

accept a gross sum in lieu of their or her dower interest, then it is further ordered and adjudged that the said referee, after paying the costs and disbursements, taxes, charges and assessments, do for the one so refusing, bring one-third of the one-sixth part of the net proceeds of the said sale into this court, to be invested for the benefit of the one so refusing; the interest or dividends thereon, or to accrue thereon, to be paid over to the one so refusing during her natural life.

And it is further ordered and adjudged that the said referee pay to the plaintiff one equal sixth part of the net proceeds of the sale of the said premises; one other equal sixth part thereof to the defendant, T. B. S., after deducting therefrom the amount of his mortgage to S. G., and the interest thereon; one other sixth part to the defendant, J. S., after deducting therefrom the amount of his mortgage to G. B. J., and the interest thereon; one other sixth part thereof to the defendant, E. L., in right of his wife S.

That the said referee pay to W. K., in right of his wife S., and to S. S., each the one-twelfth part of said net proceeds, after first deducting thereform the gross sum, which shall be paid to A. M. S. in lieu of her dower interest, if she shall consent to receive the same; and if she refuses to give such consent, then to pay the same, after deducting therefrom the amount which shall be brought into court as heretofore directed.

That the said referee bring into court the remaining one-sixth part of said net proceeds, being for the shares of the infant defendants, R. G. S. and S. N. S., children of S. H. S., deceased, first, however, deducting therefrom the gross sum that may be paid to their mother, S. S., widow of the said S. H. S., deceased, in lieu of her dower interest on the amount, which shall be brought into court in lieu of said dower interest, as herein before directed, in case of her refusal to accept such gross sum; and that the referee take receipts for all such payments, and file them with his report to be made of his proceedings, subsequent to the confirmation of his report of sale.

And it is further ordered and adjudged, that such title deeds and writings as may be in the possession or under the control of any, or of either of the parties, and as appear to relate to the premises aforesaid, or any part thereof, be deposited with the clerk of this court, in the county of Albany, for safe custody, there to remain for the benefit of all parties interested therein.

And it is further ordered and adjudged, that the purchaser or purchasers of any or either of said lots of land, at such sale be put into possession thereof; and that any of the parties in this action who may be in possession of said premises, or any part thereof, and any person, who, since the commencement of this action has come into possession of them, or either of them, deliver possession thereof to such purchaser or purchasers, on production of the referee's deed for such premises.

And it is further ordered and adjudged that the said referee make a report of his proceedings under this order, subsequent to the confirmation of his report of sale, to be made as above directed.

R. L., Clerk.

[No. 129.]

Judgment for actual partition.

(Title of action.)

Judgment, June 2, 1852.

This action having been brought on to be heard upon the report of A. B., C. D., and E. F., commissioners appointed by an order of this court, and on reading and filing said report which bears date the tenth day of December, 1851, by which it appears that the said commissioners have made partition of the premises described in the complaint in this action between the said G. H. and J. K., according to their respective rights and interests therein, as the same have been ascertained, declared and determined by this court, and by which said partition the said commissioners have

divided the whole of said premises into two allotments of equal value, and have set off in severalty to the said G. H., one of the said allotments bounded and described as follows: (insert description) as will more fully appear by a map of said partition thereto annexed; and also by which partition the said commissioners have set off in severalty to the said J. K., the other of the said allotments which is bounded and described as follows: (insert description) as will also more fully appear by reference to said map of the partition annexed to such report. And on motion of M. R., of counsel for the plaintiff, it is ordered and adjudged, that the said report, and all things therein contained, do stand ratified and confirmed, and that the partition so made be firm and effectual forever. And it is further ordered and adjudged, that the said G. H. and J. K., do each execute under their hands and seals, and acknowledge and deliver to the other, a deed of release and quit claim of the parcels of land set off to each in severalty as aforesaid. And it is further ordered and adjudged, that the said J. K. pay to the said G. H. the sum of fifty dollars, being the one-half of the costs and charges of the proceedings in this action, and that the said G. H. have execution therefor.

R. L., Clerk.

[No. 130.]

Another judgment for partition.

(Title of action.)

December 10, 1851.

This action having been brought on to be heard on the pleadings in this action, and on the report of A. B., C. D., and E. F., commissioners appointed by and under an order of this court, to make partition of the land and premises mentioned and described in this action, amongst the several parties, plaintiffs and defendants in this action, according to their several rights and interest therein: Thereupon, on

reading and filing said report, from which it appears that after first causing the same to be carefully surveyed, and a field book and map thereof, made by a surveyor, by them employed for that purpose, which field book and map is annexed and referred to in said report, they proceeded to divide the said lands and premises among the several parties to this action, according to their respective rights and interests therein, quantity, quality and value relatively considered, and did thereupon allot, assign, and set apart to the said H. J., the one equal undivided third part; to the said H. H., the one equal undivided third part; and to the said L. H., the one equal undivided third part, as tenants in common of all those certain lots described in the said field book, and laid down and distinguished on the said map as lots number (insert description.)

That they did also set apart and assign to the said H. S., to hold in severalty all those certain lots described in the said field book, and laid down and distinguished on the said map as lots (insert description.)

That they did also set apart and assign to the said N. N. to hold in severalty all those certain lots described in the said field book, and laid down and distinguished on said map as lots (insert description.)

That they did also set apart and assign to the said T. N., to hold in severalty, all those certain lots described in the said field book, and laid down and distinguished on said map as lots (insert description.)

From all which it satisfactorily appears to this court that the report of the said commissioners, and the partition so by them made as aforesaid, is in all respects just and equitable.

And on reading and filing said report, and on motion of M. R., attorney for plaintiff, N. S. appearing for all of said defendants, it is ordered and adjudged, that the said report be confirmed, and that the said partition made by the commissioners of partition in this action be, in all respects, ratified and confirmed, and the same is hereby approved and ratified; and it is further ordered and adjudged, that the said partition be firm and effectual forever.

And it is further ordered and adjudged, that the costs of the several parties in this action, including all charges and expenses incurred to effect the partition in this action, be fixed at one hundred dollars and be paid by the parties, plaintiffs and defendants as follows, to wit: The said H. J., H. H. and L. H. shall each pay the one-third of one-fourth part, and the said H. S., N. N. and T. N. shall each pay the one-fourth part thereof.

R. L., Clerk.

[No. 131.]

Judgment on inquest—decision of court.

At a circuit, &c.

A trial by jury having been waived by the defendant by failing to appear at trial, and the questions of fact in said action having been tried by the court, it is decided that the defendant is indebted to the plaintiff upon the note and account mentioned in the complaint in this action in the sum of one hundred dollars, for which amount let judgment be entered with costs.

A. J. PARKER.

Dated June 8, 1852.

[No. 132.]

Judgment dissolving marriage because of adultery (on default of defendant.)

(Title of action.)

December 9, 1851.

This action having been brought on to be heard upon the complaint herein, and upon the report of J. K., a referee duly appointed in this action, from which it appears that all the material facts charged in the said complaint are true, and that the defendant has been guilty of the several acts of adultery therein charged; on motion of M. R., attorney for

the plaintiff, it is ordered and adjudged, that the marriage between the said plaintiff and the said defendant be dissolved, and the same is hereby dissolved accordingly; and the said parties are and each of them is freed from the obligations thereof. And it is further ordered and adjudged, that it shall be lawful for said complainant to marry again in the same manner as though the said defendant was actually dead, but it shall not be lawful for the said defendant to marry again until the said complainant is actually dead.

R. L., Clerk.

[No. 133.]

Judgment dissolving marriage after the trial of an issue.

(Title of action.)

December 10, 1851.

This action having this day been brought on to be heard, on recording and filing the pleadings and report of the referee duly appointed, in pursuance of an order of this court, whereby it appears that the said defendant has been found guilty of the several acts charged against him in this complaint in this action, and on motion of M. R., of counsel for plaintiff, and on hearing of W. N., of counsel for defendant, it is ordered and adjudged that the marriage, (as in the last preceding form to the end.)

[No. 134.]

Judgment for a limited divorce or separation.

(Title of action.)

December 8, 1851.

This action having this day been brought on to be heard upon the pleadings, and the report of the referee duly appointed, and the court having duly considered the said referee's report and the arguments of counsel, and it appearing to this court that the defendant has been guilty of cruel

and inhuman treatment of the plaintiff, and of such conduct towards her as to render it unsafe and improper for her to cohabit with him: On motion of M. R., of counsel for plaintiff, and on hearing W. G., of counsel for defendant, it is ordered and adjudged that the said plaintiff and defendant be separated from bed and board forever; provided however, that the said parties may at any time hereafter, by their joint petition, apply to this court to have this judgment modified or discharged; and that neither of said parties shall be at liberty to marry any other person during the life of the other party.

And it is further ordered and adjudged that the defendant pay to the plaintiff the sum of one thousand dollars per annum from the date of this judgment, in semi-annual payments, for the support and maintenance of the plaintiff, and the children of the marriage named in the complaint in this action, and that he give security to the clerk of this court, to be approved by one of the justices thereof, for the payment of the said sum.

And it is further ordered and adjudged that the said plaintiff have the care, custody and education of the said children of the said marriage, until further order of the court.

And it is further ordered and adjudged that the defendant pay to the said plaintiff, or her attorney, one hundred dollars as the costs of this action.

R. L., Clerk.

[No. 135.]

Judgment on confession.

(Title of action.)

I, A. G., defendant, hereby confess myself indebted to D. B., plaintiff, in the sum of five hundred dollars, and interest thereon from the third day of August, 1851, and hereby authorize him, or his executors, administrators, attorney or assigns, to enter a judgment against me for that amount.

The above indebtedness arose on a promissory note given by me for value received to the said plaintiff. And I hereby state, that the sum above, by me confessed, is justly due to the said plaintiff, without any fraud whatever.

Dated December 10, 1851.

A. G.

County of Greene, ss: A. G., the defendant being sworn, says, the above statement of confession is true.

A. G.

Sworn before me, this 10th day of December, 1851,

L. P., Justice of the Peace.

Judgment, December 12, 1851.

Upon filing the foregoing confession and affidavit, on motion of M. R., plaintiff's attorney, it is hereby adjudged that the plaintiff recover of the defendant, the sum of five hundred and twelve dollars and fifty-three cents, with five dollars costs, amounting to five hundred and seventeen dollars and fifty three cents.

R. L., Clerk.

[No. 136.]

Alternative Mandamus.

The People of the State of New York, to (the court, board of supervisors, commissioners of highways, or other persons to whom it is directed,) greeting: Whereas, (here recite the facts or statements briefly which preceded the *gravamen* or injury.) Nevertheless, you (the aforesaid court or officer,) have unjustly (state briefly the order or proceeding of which you complain) as we are informed by his complaint.*

Now, therefore, we being willing that speedy justice should be done in this behalf, to him, the said A. B., do command and enjoin you, that immediately after the receipt of this writ, you (insert the thing or matter required to be done, or omitted, substantially as in the order allowing the man-

damus) or that you show cause to the contrary before our supreme court at the city hall in the city of Troy, county of Rensselaer, on the fifth day of January, 1852; lest in your default, complaint should again come to us, and how you shall have executed this, our writ, make known to us to our justices of our said supreme court, at the city hall in the city of Troy and county of Rensselaer, on the 5th day of January, 1852, and have you then and there this writ.

Witness, Hon. Ira Harris, Esq., one of the justices of our supreme court, this 10th day of December, 1851.

By the court.

[L. S.] R. L., Clerk.

[No. 137.]

Peremptory Mandamus.

(As in the last form to the asterisk) and which complaint we have adjudged to be true as appears to us of record, then proceed as in the last form to the end, *omitting* ("or that you show cause to the contrary before our supreme court at the city hall in the city of Troy, county of Rensselaer, on the fifth day of January, 1852.")

[No. 138.]

Ne exeat—writ of.

The People of the State of New York, to the sheriff of the county of Albany:

Whereas, it is represented to us in our supreme court before the justices thereof, that N. P. is greatly indebted to H. G., and the said H. G. has commenced an action in our said court against the said N. P., which said action is now pending and undetermined; and that the said defendant designs quickly to go into parts without this State, which tends to the great prejudice and damage of the said plaintiff:

Therefore, in order to prevent this injustice, we hereby command you that you do without delay cause the said N. P. personally to come before you and give sufficient security in the sum of five thousand dollars, that the said N. P. will not go nor attempt to go into parts without our State, without leave of our said court. And in case the said N. P. shall refuse to give such security, then you are to commit him, the said N. P., to the common jail of your county, there to be kept in safe custody until he shall do it of his own accord; and you are forthwith to make and return a certificate of your doings herein to our said court, together with this writ.

Witness (as in last form.)

[No. 139.]

Note of issue for trial at the circuit.

SUPREME COURT.

A. B. C. D. } Assumpsit (or Debt as the case may be.)
agt. (or) *ads.*
C. D. A. B. }

Issue joined, December 5, 1851.

M. R., Plaintiff's Att'y.
R. M., Defendant's Att'y.

[No. 140.]

Note of issue for general term.

SUPREME COURT.

A. B., appellant, } (or) { C. D., respondent,
agt. *ads.*
C. D., respondent, } { A. B., appellant.

SUPREME COURT.

Appeal (or Exceptions.)

Issue joined, September 5, 1851.

M. R., Appellant's Att'y.
R. M., Respondent's Att'y.

[No. 141.]

Notice to sheriff to return execution.

(Title of the action.)

To W. B. Esq., sheriff of Albany county.

Sir: You are hereby notified to return the above (or the within) mentioned execution within ten days after the service of this notice, or show cause at a special term of this court, to be held at the City Hall in the city of Albany, on the last Tuesday of January, 1852, at the opening of court on that day, why an attachment should not issue against you, together with ten dollars costs of this motion.

January 2, 1852.

M. R., Plaintiff's Att'y.,
Albany.

[No. 142.]

Notice of retainer.

SUPREME COURT.

A. B. }
ads. }
C. D. }

Sir: Please to take notice that I am retained as attorney for the defendant in this action. New York, Jan. 2, 1852.

Yours, &c.,
H. G., Defendant's Att'y.

M. R., Esq., Plaintiff's Att'y.

[No. 143.]

Notice of retainer and demand of copy complaint.

(Title of action.)

Sir: Please take notice that I have been retained for the defendant in this action, and I demand that a copy of the plaintiff's complaint in this action be served on me at my office in the city of New York. January 5, 1852.

Yours, &c.,
R. M., Defendant's Att'y.

To M. R., Esq., Plaintiff's Att'y.

[No. 144.]

Notice of justification of sureties.

(Title of action.)

Sir: Please take notice that the sureties for the appellant (or the plaintiff, or defendant) in this action will justify before M. P., a justice of this court (or county judge of Albany county, or justice of the peace of Albany county) at his office in the city of Albany, on the twentieth day of January instant, at ten o'clock in the forenoon.

Albany, Jan. 11, 1852.

Yours, &c.,

E. M., Plaintiff's Att'y.

To G. B., Defendant's Att'y.

[No. 145.]

Notice of adding and justifying other sureties.

(Title of action.)

Sir: Please take notice, that N. P., merchant, of the city of Albany, and M. C., hatter, of the same place, will be added to the sureties already put in for the appellant, (or plaintiff, or defendant,) or (will be substituted for the sureties already put in,) and will justify, (as in last form to the end.)

[No. 146.]

Notice of undertaking and the justification of the sureties.

(Title of action.)

Sir: Please take notice, that the within is a copy of the undertaking of the appellant, (or plaintiff or defendant) in this action, and that the persons named as sureties therein will, (as in last form.)

[No. 147.]

Notice of exception to security of bail or undertaking.

(Title of action.)

Sir: Please take notice, that I have this day excepted, and do hereby except to the (form and) sufficiency of the security filed in this action.

Troy, January 3, 1852.

Yours, &c.,
E. F. Att'y for Plaintiff.

To M. B., Esq., Att'y for Defendant.

[No. 148.]

Notice of amended pleading.

Sir: Please take notice, that the within is a copy of the amended complaint (answer or reply) in this action.

January 10, 1852.

Yours, &c.,
E. N., Plaintiff's Att'y.

To M. B., Esq., Defendant's Att'y.

[No. 149.]

Notice of assessment of plaintiff's damages and taxation of costs.

(Title of action.)

Sir: Please to take notice, that the plaintiff's damages will be assessed, and his costs taxed by R. L., clerk of this court, at his office, in the City Hall, in the city of Albany, on the fifteenth day of January inst., at ten o'clock in the forenoon. (Dated, signed and directed as in the last form.)

[No. 150.]

Notice of filing security for costs.

Sir: Please take notice, that the undertaking, of which the within is a copy, has been duly filed in the office of the clerk of this court, at the city of Albany. (Date and sign as in last form.)

[No. 151.]

Notice of trial at Circuit.

(Title of action.)

Please to take notice, that the above action will be brought to trial, (and an inquest taken therein,) at a circuit court appointed to be held in, and for the county of Albany, at the City Hall, in said city, on the first Monday of March next, at the opening of the said court, or as soon thereafter as counsel can be heard. Dated January 10, 1852.

Yours, &c.,
M. R., Att'y for Plaintiff
(or Defendant.)

To R. M., Esq.,
Att'y for Defendant (or Plaintiff.)

[No. 152.]

Notice of trial before referees.

(Title of action.)

Please to take notice, that this action will be brought to a hearing before G. H., the referee appointed herein, at his office, in the city of Troy, on the tenth day of February next, at ten o'clock in the forenoon of that day. (Date and sign as above.)

[No. 153.]

Notice of argument.

(Title of action.)

Please to take notice, that the exceptions (or appeal, as the case may be,) in the above action, will be brought on for argument before this court, at the next general (or special) term thereof, to be held at the City Hall, in the city of Albany, on the fourth day of February, 1852, at the opening of court on that day, or as soon thereafter as counsel can be heard. (Date and sign as in the usual form.)

[No. 154.]

Notice of application to a justice for a commission.

(Title of action.)

Sir: Please to take notice, that on an affidavit, of which the within is a copy, (and upon the pleadings in this action,) an application will be made to Mr. Justice Harris, at his chambers in the city of Albany, on the twentieth inst., for an order that a commission issue in this action, to be directed to A. B., lawyer, of the city of Boston, authorizing him to examine on oath D. E., of the same place, as a witness on the part of the defendant, (or plaintiff,) on interrogatories to be annexed to the said commission, in which the plaintiff (or defendant) will be at liberty to join. (Date, sign and direct as in the usual form.)

[No. 155.]

Notice of attending justice to allow interrogatories.

(Title of action.)

Sir: Please to take notice, that the interrogatories, of which the within is a copy, will be presented to Hon. Ira Harris, at his office in the city of Albany, on the 10th day of February, 1852, for the settlement of the same. (Date, &c., in the usual form.)

[No. 156.]

Notice of motion for discovery of papers.

(Title of the action.)

Sir: Take notice, that on an affidavit (or petition) of which the within (or the foregoing) is a copy, and upon the pleadings in this action a motion will be made before Mr. Justice Harris, at his office in the city of Albany, at 10 o'clock in the forenoon on the 20th day of November, 1851, for an order that plaintiff (or defendant) serve on the defendant (or plaintiff) a copy of the contract (or papers) in said affidavit mentioned, and for such other or further order as the justice may deem fit. (Date and direct in usual form.)

[No. 157.]

Notice of settlement of exceptions, &c.

(Title of action.)

Sir: Take notice, that the exceptions (demurrer to evidence or special case or special verdict,) made and (herewith) served on you in this action, will be settled before his honor, Mr. Justice Harris, at his office in the city of Albany, on the tenth day of July, 1851, at nine o'clock in the forenoon. Albany, June 20, 1851.

Yours, &c.,

H. M., Att'y for Plaintiff (or Defendant.)

To M. R., Esq., Att'y for Defendant (or Plaintiff.)

[No. 158.]

Notice of decision of justice or referee.

(Title of action.)

Sir: Please to take notice, the within is a copy of the decision made by the justice (or referees) in this action, and that the said decision is (or will be) filed in the office of the clerk of county of Albany, and judgment entered thereon, on the fifth day of July next, at 12 o'clock, M. (Date, &c., as above.)

[No. 159.]

Notice of taxation of cost.

(Title of action.)

Sir: Please to take notice, that I shall apply to the clerk of the county of Greene, at his office in the village of Catskill, on the sixth day of September inst., at nine o'clock in the forenoon, to insert in the entry of judgment in this action the foregoing (or within) sum of the charges for costs therein. (Date, &c., in the usual form.)

[No. 160.]

Notice of render in discharge of bail.

(Title of action.)

Sir: Take notice, that the above named defendant was this day rendered (or did render himself) in discharge of his bail in this action, and was thereupon committed by his honor, Mr. Justice Watson, to the sheriff of the county of Columbia. Hudson, October 10, 1851.

Yours, &c.,

M. R., Defendant's Att'y.

To G. M., Plaintiff's Att'y.

[No. 161.]

Notice of countermand.

(Title of action.)

Sir: Take notice, that I hereby countermand the notice of assessment of damages and adjustment of costs (or of trial, or of argument, or of motion for judgment,) heretofore given you in this action. New York, January 30, 1852.

Yours, &c.,

L. P., Plaintiff's (or Defendant's) Att'y.

G. H., Defendant's (or Plaintiff's) Att'y.

[No. 162.]

Notice of appeal to the general term of the supreme court.

(Title of action.)

To R. L., clerk of Albany county, and A. Y. attorney for plaintiff (or defendant):

Gents: Please to take notice, that the defendant (or plaintiff) appeals from the judgment entered in this action, to the general term of this (or the supreme) court. Said judgment was entered for five hundred dollars on the 20th of December, 1851. Albany, December 18, 1851.

Yours, &c.,

A. Y., Plaintiff's (or Defendant's) Att'y.

M. R., Defendant's (or Plaintiff's) Att'y.

(or to R. L., Clerk of Albany county.)

[No. 163.]

Notice of examination of party out of court.

(Title of action.)

Sir: Take notice, that I will examine M. P., the defendant (or plaintiff) in this action, before M. B., county judge of the county of Greene, (or a justice of this court,) at his office in the village of Catskill, on the first day of December next, at eleven o'clock in the forenoon.

Troy, November 8, 1851.

Yours, &c.,

M. R., Att'y for Plaintiff, (or Defendant.)

J. G., Att'y for Defendant (or Plaintiff.)

[No. 164.]

Notice of no personal claim on defendant in foreclosure.

(Title of the action.)

To J. B., one of the above named defendants:

Sir: The summons herewith served upon you in this action, is issued upon a complaint praying the foreclosure of

a mortgage, executed by S. V., and M. his wife, to C. K., on the 29th day of October, 1848, recorded in the Albany county clerk's office, in book of mortgages No. 150, page 600, on the 30th day of October, 1848, for the sum of five hundred dollars, with interest from that date, payable semi-annually, upon the following described premises: (insert description) and no personal claim is made against you, or against any defendant, except the said defendant, S. V.

Dated December 12, 1851.

M. R., Plaintiff's Att'y, Albany.

[No. 165.]

Notice of lis pendens in foreclosure.

(Title of the action.)

Notice is hereby given that an action has been commenced in this court upon a complaint of the above named plaintiff, against the defendants above named, for the foreclosure of a mortgage bearing date the 29th day of Oct., 1848, executed by S. V., and M. his wife, to C. K., recorded in the Albany county clerk's office, in book of mortgages No. 150, page 600; and that the premises mentioned in and affected by said mortgages, were, at the time of the commencement of this action, and the time of filing this notice, situated in the sixth ward of the city of Albany, and are described in the said mortgage as follows: (insert description of premises.) Dated Albany, August 9th, 1850.

M. R., Plaintiff's Att'y.

[No. 166.]

Notice of lis pendens in partition.

(Title of the action.)

Notice is hereby given that an action has been commenced in this court upon a complaint of the above named plaintiff,

against the above named defendants, for the purpose of obtaining a partition and division of the premises therein described among the owners thereof, by commissioners to be appointed for that purpose; or for a sale thereof under the direction of this court, and for a division of the proceeds of such sale among such owners, according to their several and respective rights and interests therein; which premises are described in the said complaint as follows, to wit: (insert description.)

M. R., Plaintiff's Att'y.

December 5, 1851.

[No. 167.]

Notice of no personal claim in partition.

(Title of action.)

To C. D., one of the above named defendants:

Sir: Please to take notice, that the summons herewith served upon you in this action is issued upon a complaint praying the partition and division of the premises therein described, among the owners thereof, by commissioners to be appointed for that purpose; or for a sale thereof, under the direction of this court; and for a division of the proceeds of such sale among such owners, according to their several and respective rights and interests therein. And no personal claim is made against you, or against any of the defendants. The premises sought to be divided, are described in the said complaint herein as follows, to wit: (insert description.)

January 30, 1852.

A. B., Plaintiff's Att'y,
Albany.

[No. 168.]

Notice of substitution of attorney.

(Title of action.)

Take notice, that the undersigned has been substituted in the place of A. B., Esq., as attorney for the above named defendant (or plaintiff) in this action. Feb. 5, 1852.

Yours, &c.,

N. A., Att'y for Defendant
(or Plaintiff.)

To G. C., Esq., Att'y for
Plaintiff (or Defendant.)

[No. 169.]

Notice of claim to surplus moneys.

(Title of action.)

To R. L., clerk of the county of Albany, and to M. R., attorney for plaintiff:

Gents: Take notice, that we, the subscribers, have a claim on the surplus proceeds of the sale made on the 6th of February instant, under an order in the above entitled action, and that said claim amounts to one thousand dollars, and interest thereon from the first day of December, 1850, by virtue of a lien under a judgment against (or mortgage given by) S. M., the above defendant, while the said S. M. was the owner of the equity of redemption in the mortgaged premises, and before the commencement of this action, which lien is next in priority after the mortgage of the complainant in this action. Albany, February 10, 1852.

A. B.
C. D.

P. B., Attorney.

[No. 170.]

Notice of a judge's order.

Take notice, that the within is a copy of an order made by Mr. Justice Harris in the within entitled action.

January 30, 1852.

Yours, &c.,

R. M., Plaintiff's Att'y.

To J. H., Defendant's Att'y.

[No. 171.]

Demand to have the action tried in the proper county.

(Title of action.)

Sir: Please take notice, that the defendant hereby demands that the trial of this action be had in the county of Orange, instead of the county of New York.

February 7, 1852.

Yours, &c.,

M. R., Defendant's Att'y,

To A. B., Esq., Plaintiff's Att'y. Goshen.

[No. 172.]

Notice of offer to compromise.

(Title of action.)

Sir: Please to take notice, that the defendant hereby offers to let judgment be entered against him, in favor of the plaintiff in this action, for the delivery to him, the said plaintiff, of the following described property, being part of the property mentioned in the complaint, viz: (here describe property particularly) or (for the sum of one hundred dollars,) together with seven dollars costs and the disburements in this action. December 20, 1851.

Yours, &c.,

R. G., Defendant's Att'y.

To H. L., Esq., Plaintiff's Att'y.

[No. 173.]

Notice of acceptance of offer.

(Title of action.)

Sir: Take notice, that the plaintiff hereby accepts the offer of the defendant, to let judgment be entered against him, the said defendant, for one hundred dollars, together with seven dollars costs and the disbursements herein.

December 25, 1851.

Yours, &c.,

R. H., Plaintiff's Att'y.

M. B., Esq., Defendant's Att'y.

[No. 174.]

Demand of copy of an account.

(Title of action.)

Sir: I hereby demand a (verified) copy of the items alleged in the complaint (or set up in the defendant's answer) in this action. December 3, 1851.

Yours, &c.,

S. W., Att'y for Defendant,

(or Plaintiff,) New York.

To G. B., Esq.,

Att'y for Plaintiff (or Defendant.)

[No. 175.]

Notice to sheriff requiring delivery of personal property.

To the sheriff of the county of Greene:

Sir: Please take notice, that I hereby require you to take the personal property mentioned and set forth in the within affidavit, and deliver the same to the plaintiff in this action. February 8, 1852.

Yours, &c.,

M. A., Plaintiff's Att'y.

[No. 176.]

Notice to sheriff of claim to personal property by third person.

To L. B., Esq., sheriff of Greene county:

Take notice, that I claim the personal property heretofore taken by you, and mentioned and described in the foregoing affidavit, and require the delivery thereof to me.

February 9, 1852.

Yours, &c.,

A. B.

[No. 177.]

Notice by sheriff that a third person claims personal property.

(Title of action.)

Sir: Please take notice, that A. B. claims the property taken by me in this action, and that I require to be indemnified by the plaintiff against such claim; and without such indemnity, I shall not deliver such property to the plaintiff, or keep the same in my possession. February 10, 1852.

W. B., Sheriff.

To G. L., Esq.,
the above named Plaintiff's Att'y.

[No. 178.]

Notice to sheriff to return to defendant personal property.

(Title of action.)

To W. B., Esq., sheriff of Greene county:

I hereby require that you return to me the personal property taken by you in this action. February 11, 1852.

Yours, &c.,

C. G.,
by M. C., Defendant's Att'y.

[No. 179.]

Notice of filing remittitur.

(Title of action.)

Sir: Please to take notice, that the remittitur in the above action has been filed in the Albany county clerk's office, and that judgment will be entered thereon, and costs taxed by the clerk of the said county, on the 15th inst., at ten o'clock, A. M. February 3, 1852.

Yours, &c.,

G. B., Att'y for Appellant.

To E. M., Esq., Att'y for Respondent.

[No. 180.]

Notice of motion that defendant be discharged from arrest.

(Title of action.)

Sir: Please to take notice, that upon an affidavit, with a copy whereof you are herewith served, a motion will be made before his honor, Justice Harris, at his office, in the city of Albany, on the 20th inst., at ten o'clock, A. M., that the defendant in this action be discharged from arrest herein.

February 10, 1852.

Yours, &c.,

M. R., Defendant's Att'y.

To E. B., Esq., Plaintiff's Att'y.

[No. 181.]

Notice of motion to set aside judgment on default as irregular.

(Title of action.)

Sir: Please to take notice, that upon the affidavit, with a copy of which you are herewith served, this court will be moved at the next special term thereof, to be held at the City Hall, in the city of Albany, on the last Tuesday of

February instant, at the opening of the court, that the judgment entered by default against the defendant in this action, and all subsequent proceedings therein be set aside for irregularity. February 2, 1852.

Yours, &c.,

L. B., Defendant's Att'y.

M. A., Esq., Plaintiff's Att'y.

[No. 182.]

Notice of motion to strike out counts in a pleading.

(Title of action.)

Take notice, upon an affidavit, a copy of which you are herewith served, and upon all the papers heretofore served in this action, this court will be moved at the next special term thereof, to be held at the City Hall, in the city of Albany, on the last Tuesday of January inst., at the opening of the court, that the fourth, fifth and sixth folios of the plaintiff's complaint, (or the defendant's answer) herein be stricken out, as irrevelant (or redundant.) January 10, 1852.

Yours, &c.,

M. C., Att'y for Plaintiff
(or Defendant.)

To A. B., Esq., Att'y for Defendant
(or Plaintiff.)

[No. 183.]

Notice of motion for leave to amend pleading.

(Title of the action.)

Sir: Take notice, that upon an affidavit and and proposed amended answer, (complaint or reply,) copies of which you are herewith served, and upon the pleadings served in this action, a motion will be made at the next special term

of this court, to be held at the City Hall, in the city of Albany, on the last Tuesday of January inst., at the opening of court, for leave to serve an amended answer, (complaint or reply) in this action, or for such other or further order as the court may grant. January 5, 1852.

Yours, &c.,

G. W., Att'y for Defendant,
(or Plaintiff,) Albany.

To W. G., Esq., Att'y
for Plaintiff (or Defendant.)

[No. 184.]

Notice of motion for leave to serve supplementary pleading.

(Like the last form, with the exception of substituting the word " supplementary " in place of " amended.")

[No. 185.]

Notice of motion to consolidate actions.

(Titles of all the actions.)

Sir: Please to take notice, that on the first Monday of March next, at a special term of this court to be held at the City Hall, in the city of Albany, at ten o'clock, A. M., a motion will be made that all these actions be consolidated into one, upon such terms and conditions as the court shall direct, and this motion will be founded on an affidavit, a copy of which is herewith served, together with the pleadings in the said several actions. Dated February 10, 1851.

A. C., Att'y for Defendant,
Albany.

To B. E., Esq.,
Att'y for Plaintiff.

[No. 186.]

Notice of motion to change place of trial.

(Title of action.)

Sir: Please to take notice, that upon an affidavit of which the foregoing is a copy, and upon the pleadings in this action, this court will be moved at the next special term thereof, to be held at the city hall, in the city of Albany, on the last Tuesday of February inst., at ten o'clock, A. M., that the place of trial in this action, be changed from the county of Albany to the county of New York. February 3, 1852.

Yours, &c.,
B. P., Defendant's Att'y,
New York.

To C. G., Esq., Plaintiff's Att'y.

[No. 187.]

Notice of motion for judgment on frivolous answer or demurrer.

(Title of action.)

Sir: Please to take notice, that I shall apply to Hon. Ira Harris, a justice of this court, at his office in the city of Albany, on the 14th day of Feb. inst., at 9½ A. M., for judgment upon the demurrer (or answer) in this action, for the frivolousness thereof, (and if judgment is rendered for the plaintiff thereon, the costs will be taxed forthwith by the clerk of Albany county, at his office in the city hall in said city.) Albany, February 6, 1852.

Yours, &c.,
G. M., Att'y for Plaintiff.

To E. S., Esq., Att'y for Defendant.

[No. 188.]

Notice of motion for reference.

(Title of action.)

Sir: Please to take notice that upon an affidavit, of which the within is a copy, this court will be moved, at the

next special term thereof, to be held at the City Hall, in the city of Albany, on the last Tuesday of Feb. inst., at 10 A. M.,* that this action be referred to J. K., B. A., and G. Y. Albany, February 2, 1852.

Yours, &c.,
E. K., Att'y for Defendant
(or Plaintiff.)

To W. Z., Esq., Att'y for Plaintiff
(or Defendant.)

[No. 189.]

Notice of motion for special jury.

(As in the last form to the * then as follows :) that the issue in this action be tried by a struck jury. (Dated, &c., as in last form.)

[No. 190.]

Notice of motion for a foreign jury.

(As in last form but one to the * and then as follows :) that the issue of this action be tried by a jury of the county of Greene. (Date, &c., as above.)

[No. 191.]

Notice of motion to set aside report of referee.

(Title of action.)

Sir : Please to take notice, that upon affidavits, copies of which you are herewith served, this court will be moved, at the next term thereof, to be held at the City Hall, in the city of Albany, on the first day of March next, at the opening of

court on that day, or as soon as counsel can be heard, * that the report of the referees in this action be set aside with costs. Troy, February 10, 1852.

Yours, &c.,

Y. G., Att'y for Defendant
(or Plaintiff.)

To C. B., Esq., Att'y for Plaintiff
(or Defendant.)

[No. 192.]

Notice of motion for costs of circuit.

(Title of action.)

(As in the last to the * then as follows :) for an order that the defendant in this action be allowed his costs of attending prepared for the trial of this action, at the last term of the circuit court, which was held at the court house in Schenectady on the first Monday of December last, pursuant to a notice of trial given by the attorney for the above named plaintiff. (Dated as in last form.)

[No. 193.]

Notice of motion for a commission.

(Title of action.)

Sir : Please to take notice, that on the affidavit, a copy whereof you are herewith served, a motion will be made before the Hon. Ira Harris, one of the judges of this court, at his chambers in the city of Albany, on the 8th day of March, 1852, at 10 o'clock, A. M., that a commission issue in this action, to be directed to S. B., of Hoboken, State of New Jersey, counsellor at law, authorising him to examine on oath, C. S., of Hoboken aforesaid, as a witness in this ac-

tion, on behalf of the plaintiff, on interrogatories to be annexed to such commission, in which defendants will be at liberty to join. February 28, 1852.

Yours, &c.,

H. V., Plaintiff's Att'y.

To C. B., Esq., Defendant's Att'y.

[No. 194.]

Notice of motion for judgment, as in case of nonsuit.

(Title of action.)

Take notice, that on affidavits, of which the within are copies, this court will be moved at the next special term thereof, to be held at the City Hall, in the city of Albany, on the last Tuesday of December inst., at the opening of court, or as soon thereafter as counsel can be heard, * for judgment, as in case of nonsuit in this action, by reason of the plaintiff's failing to proceed to trial according to the statute, and the rules and practice of this court.

December 5, 1851.

Yours, &c.,

B. P., Defendant's Att'y.

M. O., Esq., Plaintiff's Att'y.

[No. 195.]

Notice of motion to set aside verdict, and for a new trial for irregularity.

(As in the last form to the *, then as follows): that the verdict rendered in this action be set aside for irregularity with costs, and that a new trial be ordered, (or for such other or further order as the court may direct.) (Date, &c., as in the last form.)

[No. 196.]

Notice of motion to set aside inquest for irregularity.

(As in the last form to the *, then the following :) that the inquest taken in this action, and all proceedings on the part of the plaintiff subsequent to the same, be set aside for irregularity, with costs. (Date, &c., as last form.)

[No. 197.]

Notice of motion to set aside regular inquest.

(As in the last form to the *, then) that the inquest heretofore taken in this action be set aside, upon such terms as to the court shall seem just. (Date, &c., as above.)

[No. 198.]

Notice of motion to set aside nonsuit, and for new trial.

(Title of action.)

Sir: Please to take notice, that upon the case, with a copy of which you are herewith served, this court will be moved at the next term thereof, to be held at the City Hall, in the city of Troy, on the first Monday of March next, on the opening of court on that day, that the judgment of nonsuit entered in this action be set aside, and a new trial granted, or for such other or further rule as the court may direct. Troy, February 6, 1852.

Yours, &c.,

E. W., Att'y for Plaintiff.

W. M., Esq., Att'y for Defendant.

[No. 199.]

Notice of motion to stay proceedings till security for costs is filed.

(Title of action.)

Sir: Please to take notice, that on affidavits, copies of which you are herewith served, this court will be moved at the next special term thereof to be held at the City Hall, in the city of Troy, on the first day of March next, at the opening of court, that all proceedings in this action be * stayed, until the security be given for the payment of costs herein.

Troy, February 5, 1852.

Yours, &c.,
A. W., Defendant's Att'y.

To P. Q., Esq., Plaintiff's Att'y.

[No. 200.]

Notice of motion to set aside all proceedings as irregular.

(As in the last form to the *, then as follows:) set aside for irregularity, with costs. (Date, &c., as in the last form.)

[No. 201.]

Notice of motion in arrest of judgment.

(Title of action.)

Sir: Please take notice, that on the fourth day of January, 1852, at ten o'clock, A. M., at the City Hall, in the city of Albany, this court will be moved for an order, directing an arrest of judgment to be entered in this action, and which motion will be founded on the record and proceedings on file in this action. Troy, December 10, 1851.

Yours, &c.,
A. R., Defendant's Att'y.

S. G. B., Esq., Plaintiff's Att'y.

[No. 202.]

Notice of motion to set aside judgment and execution and restore money levied.

(Title of action.)

Sir: Please to take notice, that upon affidavits, copies of which you are herewith served, this court will be moved at the next special term thereof, to be held at the City Hall, in the city of Albany, on the last Tuesday of January, 1852, for an order that * the judgment in this action and the execution issued thereon be set aside for irregularity, with costs; and that the moneys levied in this action be restored, with interest from the time of such levy.

Albany, January 5, 1852.

Yours, &c.,

A. B., Defendant's Att'y.

To B. A., Esq., Plaintiff's Att'y.

[No. 203.]

Notice of motion for leave to issue execution.

(As in the last form to the *, then) that the plaintiff have leave to issue execution on the judgment in this action.

Albany, January 6, 1852.

Yours, &c.,

B. C., Plaintiff's Att'y.

To M. P., Esq., Defendant.

[No. 204.]

Notice of motion to dissolve injunction.

(As in the last form to the *, then) that the injunction issued in this action be dissolved, with costs; and for such other or further order as the court may grant.

Hudson, January 2, 1852.

Yours, &c.,

J. H., Defendant's Att'y.

To H. B., Esq., Plaintiff's Att'y.

[No. 205.]

Notice of motion for reference to obtain surplus moneys.

(As in the last form to the *, then) it be referred to A. B., Esq., of the city of Albany, a counsellor of this court, to ascertain and report the amount due the said M. B., or to any other person, which is a lien upon such surplus moneys, and as to the priorities of the several liens thereon.

Albany, January 5, 1852.

Yours, &c.,

K. C., Att'y for Defendant, C. D.

To W. M., Esq., Plaintiff's Att'y.

[No. 206.]

Notice of motion to strike cause from the calendar for not serving papers.

(Title of action.)

Take notice, that upon the affidavit, of which the within is a copy, this court will be moved on the fifteenth day of February instant, at the Capitol, in the city of Albany, at the opening of court, that this action be stricken from the calendar, and that judgment be rendered in favor of the respondent, with costs. Albany, February 2, 1852.

Yours, &c.,

S. G., Att'y for Respondent.

M. B., Esq., Att'y for Appellant.

[No. 207.]

Notice of motion for a mandamus.

To (insert name of party proceeded against.)

Take notice, that upon affidavits, copies of which are herewith served, a motion will be made at the next special term of the supreme court, to be held at the City Hall, in the city

of Albany, on the last Tuesday of January instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for a writ of mandamus to be directed to (set forth whom) commanding that (here state the object of the writ.) Albany, January 3 1852.

Yours, &c.,

B. B., Att'y for J. G.

[No. 208.]

Notice of motion to vacate order of arrest.

(Title of action.)

Sir: Please take notice, upon an affidavit, of which the within is a copy, and upon all the papers filed and served in this action, a motion will be made before his honor, Mr. Justice Harris, at his office, in the city of Albany, on the tenth day of February instant, at ten o'clock in the forenoon, to vacate the order of * arrest in this action.

Albany, February 3, 1852.

Yours, &c.,

G. B., Att'y for Defendant.

M. R., Esq., Plaintiff's Att'y.

[No. 209.]

Notice of motion to discharge attachment.

(As in the last form to the *, and then as follows:) of attachment in this action. (Date, &c., as above.)

[No. 210.]

Notice of motion for injunction and appointment of receiver.

(Title of action.)

Sir: Please take notice that upon affidavits, copies of which you are herewith served, and upon the papers and pleadings served and filed in this action, this court will be

moved at the next special (or general) term thereof, to be held at the City Hall, in the city of Albany, on the first Monday of March next, at the opening of court, for an order that an injunction issue herein and for the appointment of a receiver of the rents and profits of the estate of the defendant mentioned in the pleadings in this action.

Albany, February 3, 1852.

Yours, &c.,

A. B., Plaintiff's Att'y.

To C. G., Esq., Defendant's Att'y.

[No. 211.]

Order for the appointment of guardian for an infant plaintiff.

On reading and filing the within petition of E. G., the petitioner being of the age of fourteen years and upwards, praying the appointment of B. K. as his guardian, it is hereby ordered that the said B. K. be, and he hereby is appointed guardian, to prosecute an action in the supreme court against the within P. N. December 10, 1851.

A. J. PARKER.

[No. 212.]

Order for appointment of guardian for infant defendant.

On reading and filing the petition of G. W., plaintiff in the within entitled action, (or of C. D., the within named defendant,) praying the appointment of some suitable and proper person, as the guardian of the said C. D., defendant in said action, I do hereby appoint C. E., of the city of Schenectady, an attorney of this court, the guardian of said C. D., to defend the said action. January 5, 1852.

IRA HARRIS.

[No. 213.]

Another form.

I do hereby appoint A. B., Esq., of the city of Troy, as guardian of B. P., the within named defendant, to defend the within entitled action. Albany, February 6, 1852.

A. J. PARKER.

[No. 214.]

Order to arrest and hold to bail.

(Title of action.)

To the sheriff of the county of Greene :

You are required forthwith to arrest the defendant in this action, and hold him to bail in the sum of five thousand dollars, and to return this order to A. B., plaintiff's attorney, at Albany, on or before the fifth day of March, one thousand eight hundred and fifty-two. Dated February 10, 1852.

A. J. PARKER.

A. B., Plaintiff's Att'y.

(Endorsed. "By order of the court." R. L., Clerk.)

[No. 215.]

Order for mitigation of bail.

(Title of action.)

Let the bail taken (or to be taken) by the sheriff, on the order issued to the sheriff, in this action, be mitigated or reduced to one hundred dollars. Dated February 11, 1852.

A. J. PARKER.

(Endorsed. "By order of the court." R. L., Clerk.)

[No. 216.]

Order for a committitur on surrender of bail.

(Title of action.)

The defendant, on the prayer (or on his own prayer,) and for the indemnity of his sureties, is committed to the custody of the sheriff of the city and county of Albany, at the suit of the plaintiff in the above action. February 5, 1852.

A. C. PAIGE.

[No. 217.]

Order to show cause why an exoneretur should not be entered.

It appearing to me that the defendant in this action has been committed to and remains in the custody of the sheriff of the county of Schenectady, let the plaintiff show cause before me at my chambers in the city of Albany, on the third day of January instant, at ten o'clock in the forenoon, why the bail of the said defendant should not be exonerated from their liability. January 1, 1852.

A. J. PARKER.

[No. 218.]

Order for exoneretur.

(Title of action.)

On motion of E. K., Esq., of counsel, on the part of the following named bail, and after hearing D. W., Esq., for plaintiff, (or no one appearing for plaintiff,) it is hereby ordered that A. B., and C. D., the bail in this action, be exonerated. January 3, 1852.

D. CADY.

[No. 219.]

Another form.

Let A. B., and C. D., the within named bail be, and the same are hereby exonerated. January 3, 1852.

A. J. PARKER.

[No. 220.]

Order to furnish copy contract, or other papers.

(Title of action.)

It is hereby ordered that the plaintiff (or defendant) in this action furnish to the defendant (or plaintiff) herein, within two days after service of this order, an inspection and copy of the contract on which said action is brought (or the paper mentioned in the affidavit used on this motion) or, (on which recoupment is claimed) (and that ten dollars costs be allowed to abide the event of this action.)

December 10, 1851.

IRA HARRIS.

[No. 221.]

Alternative order to file security for costs.

(Title of action.)

Let the plaintiff in this action file security for costs herein, within fifteen days after service of a copy of this order, or show cause before me, at my office, on the eighteenth inst., at ten o'clock, A. M., why the same is not done, and in the mean time let all proceedings on the part of the plaintiff be stayed. January 2, 1852.

A. J. PARKER.

[No. 222.]

Peremptory order to file security for costs.

(Title of action.)

A copy of the order to show cause this day, why the plaintiff in this action should not file security for costs according to the statute, having been regularly served by the plaintiff's attorney, and no cause having been shown why the same should not be done; let all proceedings in this action be stayed until such security be filed, and the sureties justify, if excepted to. January 28, 1852.

A. J. PARKER.

[No. 223.]

Order for further time to put in complaint, answer or reply.

(Title of action.)

Let the time to serve the complaint, (answer or reply) in the above action, be extended twenty days.

Albany, February 10, 1852.

IRA HARRIS.

[No. 224.]

Alternative order for bill of particulars of plaintiff's demand.

(Title of action.)

Let the plaintiff's attorney deliver to the defendant's attorney in writing, a bill of the particulars of plaintiff's demand in this action, by the tenth day of February inst., at twelve o'clock, M., or show cause before me at that time, at my office, in the city of Albany, why the same should not be so delivered; and in the meantime let all further proceedings on the part of the plaintiff in this action be stayed. February 1, 1852.

A. J. PARKER.

[No. 225.]

Peremptory order for bill of plaintiff's particulars.

(Title of action.)

Let the plaintiff's attorney give to the defendant's attorney a bill of particulars of plaintiff's demand in this action, and in the meantime let all further proceedings in this action be stayed. February 10, 1852.

A. J. PARKER.

[No. 226.]

Alternative order for defendant's bill of particulars of set off.

(Title of action.)

Let the defendant's attorney give the plaintiff's attorney in writing, a bill of particulars of the defendant's set off, as claimed in his answer in this action, by the twelfth day of February inst., at nine o'clock A. M., or show cause before me at my office, in the city of Albany, at that time, why it should not be so given, and in the meantime all further proceedings herein to be stayed. Albany, February 3, 1852.

IRA HARRIS.

[No. 227.]

Peremptory order for defendant's set off.

(Title of action.)

Let the defendant's attorney give to the plaintiff's attorney, a bill of the particulars of set off, claimed by the defendant in this action, and all further proceedings in the meantime to be stayed. February 12, 1852.

IRA HARRIS.

[No. 228.]

Order that plaintiff furnish further and more particular bill of particulars of demand.

(Title of action.)

Let the plaintiff's attorney give to the defendant's attorney, a further bill of particulars of plaintiff's demand in this action, specifying particularly the times and amounts of each of the items in the said bill claimed, within ten days after service of this order, and in the meantime all further proceedings herein to be stayed. February 15, 1852.

IRA HARRIS.

[No. 229.]

Order for a commission.

(Title of action.)

On reading and filing notice and affidavit herein, and on motion of M. R., Esq., for the plaintiff, (or defendant,) and after hearing R. M., Esq., attorney for defendant, (or plaintiff,) ordered, that a commission issue to examine P. C., of the city of Boston, State of Massachusetts, on interrogatories to be annexed to such commission, and that the defendant (or plaintiff) be at liberty to join in such commission, and that the same may be returned by mail, addressed to the clerk of the county of Albany, (where the place of trial is laid,) and that the trial of the cause be stayed until the return of such commission, and that such commission be directed to P. B., Esq., counsellor at law in the said city of Boston.

November 20, 1851.

D. CADY.

[No. 230.]

Order to stay proceedings.

Let all the proceedings on the part of the plaintiff (or defendant) in the action in the within affidavit mentioned, be stayed for fifteen days from and after the service of this order. October 10, 1851.

D. CADY.

[No. 231.]

Order for judgment debtor to make discovery on return of execution unsatisfied, and forbidding transfer of property.

(Title of action.)

It appearing to me that judgment has been recovered in the above action in favor of said plaintiff against said defendant, and that an execution against the property of the

said judgment debtor, has been duly issued to the sheriff of the proper county upon the judgment herein, and that such execution has been returned by said sheriff, wholly (or in part) unsatisfied, and that such judgment still remains unpaid:

I do hereby order and require the said defendant to appear before me, at my office in the city of Schenectady, on the 10th inst., at ten o'clock in the forenoon, to make discovery on oath concerning his property. And the said defendant is hereby forbidden to transfer, dispose of, or in any manner to interfere with any property, moneys, or things in action belonging to him, until further order in the premises.

January 5, 1852.

J. A., County Judge.

[No. 232.]

Order to examine third person as to property of a judgment debtor.

(Title of action.)

It appearing to me that an execution against the property of the above named defendant has been duly issued to the sheriff of the proper county, upon the judgment herein, and returned unsatisfied, and that A. B., Esq., has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, I do hereby require the said A. B. to appear before me at my office in the city of Schenectady, on the twentieth inst., at ten o'clock in the forenoon, and be examined concerning the same. (Add clause forbidding payment or transfer, if necessary.) October 8, 1851.

J. B., Schenectady Co. Judge.

[No. 233.]

Order for receiver of judgment debtor's property.

(Title of action.)

An order having been heretofore duly made by me, pursuant to the 294th section of chapter II title IX of the

code of procedure, requiring R. H., alleged to be indebted to the above named defendant, to make discovery on oath before me in relation to said debtor's property, and he having been examined accordingly, I do hereby order that H. S., of the city of Albany, be, and the same is hereby appointed a receiver of all the debts, property, equitable interests and things in action of said defendant; that such receiver before entering upon the execution of his trust, execute to the clerk of this court a bond, (with sufficient sureties to be by me approved,) in the penalty of five hundred dollars, conditioned that he will faithfully perform and discharge the duties of such trust, and that said H. S., upon filing such bond in the office of the clerk of Albany county, be invested with all rights and powers as receiver, according to law.

That the sum of ten dollars be allowed to said plaintiff for costs of this proceeding, and that said defendant be enjoined and restrained from making any disposition of, or interfering with his property, equitable interests, things in action, or any of them, except in obedience to this order, until further order in the premises. Albany, October 15, 1851.

WM. PARMELEE,
Albany Co. Judge.

[No. 234.]

Order to apply property of judgment debtor to satisfy judgment.

(Title of action.)

It appearing to my satisfaction that G. H. is indebted to the above named defendant in the sum of one hundred dollars, and that an execution against the property of the said defendant has been returned, wholly (or in part) unsatisfied, I do hereby order the said G. H. to pay the sum of one hundred dollars to the above named plaintiff, to be applied towards the satisfaction of the judgment in this action.

January 10, 1851.

U. J., Schenectady Co. Judge.

[No. 235.]

Order to show cause why an attachment should not issue.

(Title of action.)

On proof of due service of the order made in this cause by me on the defendant herein, it is ordered that the said defendant show cause before me, at my office in the city of Albany, on the twentieth instant, at ten o'clock in the forenoon, why an attachment should not issue against him, and he be punished for his alleged misconduct in violating said order. December 18, 1851.

IRA HARRIS.

[No. 236.]

Order to vacate an order without notice.

(Title of action.)

I hereby vacate and discharge the order made by me in this action on the 20th inst. Albany, December, 24, 1851.

W. P., Albany Co. Judge.

[No. 237.]

Order to vacate an order with notice.

(Title of action.)

On motion of B. F., Esq., attorney for plaintiff, (or defendant,) and after hearing M. R., Esq., for defendant, (or plaintiff,) it is hereby ordered that the order made in this action by me on the fifth instant, be, and the same is hereby vacated and discharged. Albany, December 24, 1851.

IRA HARRIS.

[No. 238.]

Order for examination to perpetuate testimony.

I hereby appoint the fifth day of January next, at my office, in the city of Albany, at ten o'clock in the forenoon, for the examination of L. M., as a witness upon the within application. December 20, 1851.

A. J. PARKER.

[No. 239.]

Order to examine witness de bene esse.

(Title of action.)

It appearing to me that the examination of the above mentioned H. B., as a witness is reasonable, in order to obtain justice between the parties herein, let the said H. B. be examined *de bene esse* as a witness in this action before me at my office, in the city of Schenectady, on the 20th inst., at three o'clock in the afternoon, and let the defendant (or plaintiff) herein appear also at the same time and place, and attend to said examination.

December 15, 1851.

A. C. PAIGE.

[No. 240.]

Order for publication of summons.

(Title of the action.)

It appearing to my satisfaction, by the affidavits of B. C. and A. E., that a cause of action exists against the above named defendants arising on contract, and that the said defendant has property within this State, (or the defendant is a foreign corporation and has property within the State, or that the said defendant being a resident of this State has departed therefrom with the intent to defraud his creditors:) I do order that the summons in this action, of which the

following is a copy, viz: (here set forth summons,) be served on such defendants by the publication thereof, once in each week for six weeks, in the newspaper printed in the county of Monroe, called the Rochester Daily Advertiser, and also in the newspaper printed in the city of Albany, called the Albany Evening Atlas; and further, a copy of the summons and complaint be deposited in the post office, addressed to the said defendant.

S. L. SELDEN.

[No. 241.]

Order changing place of trial.

At a special term of the supreme court, held at the City Hall, in the city of Albany, on the last Tuesday of January, 1852.

Present, Hon. IRA HARRIS, Justice.

C. D. *ads.* N. B.

On reading and filing an affidavit and notice of motion, with proof of due service thereof on the plaintiff's attorney, on motion of W. R., Esq., of counsel for the defendant, and after hearing of B. C., Esq., of counsel for the plaintiff, * (or no one appearing to oppose) it is ordered that the place of trial of this action be, and the same hereby is changed from the county of Schenectady to the county of Monroe, with ten dollars costs to abide the event of the suit.

[No. 242.]

Order denying notice to change place of trial.

(As in the last form to the *, and then as follows:) it is ordered that the motion to change the place of trial in this action be denied, with ten dollars costs (to abide the event of the action.)

[No. 243.]

Order for special or struck jury.

At a special term of the supreme court held for the State of New York, at the City Hall, in the city of Albany, on the fourth day of November, 1851.

Present, Hon. IRA HARRIS, Justice.

P. B. *agt.* C. D.

On reading and filing affidavits, and hearing counsel for both parties, it is ordered that a special jury be struck for the trial of the issue in this action.

[No. 244.]

Order for a foreign jury.

At a special term, &c.

(Title of the action.)

On reading and filing affidavits, on motion of M. R., Esq., of counsel for plaintiff (or defendant,) and after hearing S. B., Esq., of counsel for the defendants (or plaintiffs,) it is ordered that the issue joined in this action be tried by a jury, to be taken and summoned from the body of the county of Schenectady.

[No. 245.]

Order for a reference at the circuit.

At a circuit court held at the City Hall, in the city of Abany, in and for the county of Albany, on the 22d day of January, 1852.

Present, Hon. IRA HARRIS, Justice.

(Title of the action.)

It appearing to this court that the trial of this action will require the examination of long accounts, on motion of A. B., Esq., of counsel for plaintiff (or defendant,) (or the court

of its own motion,) orderd that this action be referred to D. E., Esq., of the city of Troy, counsellor at law, and that he (or to M. P., N. O., and W. V., Esqrs., and that they or any two of them) report thereon with all convenient speed.

[No. 246.]

Peremptory order to file security for costs.

At a special term, &c.

(Title of action.)

It appearing by the affidavit of defendant's attorney in this action, that a copy of the order to show cause this day why the plaintiff in this action should not file security for costs according to the statute, has been regularly served, and no cause having been shown why the same should not be done, let all proceedings in this action be stayed until such security be filed.

[No. 247.]

Order for extra allowance of costs.

At a circuit court, &c.

(Title of the action.)

The plaintiff in this action having recovered the sum of five hundred dollars, and the same being a difficult (or extraordinary) action, (or the defence having been unfairly or unreasonably conducted,) the plaintiff is allowed ten per cent. on the amount of such recovery, by way of costs.

[No. 248.]

Order to continue action against representatives of deceased defendant.

At a special term, &c.

(Title of the action.)

On reading and filing a petition in this action, duly verified, and on motion of A. B., Esq., of counsel for the peti-

tioner, after hearing C. D., Esq., as counsel for E. F., administrator &c. of deceased defendant, it is ordered that this action be, and the same is hereby continued against the said E. F., administrator, &c. of P. Q., the defendant deceased herein.

[No. 249.]

Order to put off trial at the circuit.

At a circuit court, &c.

(Title of action.)

On reading and filing affidavits, and on motion of M. R., Esq., of counsel for the defendant, and after hearing of B. M., Esq., of counsel for plaintiff, ordered that the trial of this action be postponed to the 25th instant, on the payment of ten dollars costs, (or to next circuit, on payment of costs of the present circuit.)

[No. 250.]

Order to set aside execution and restore monies levied.

At a special term, &c.

(Title of action.)

On reading and filing of affidavits, and on motion of Mr. B., of counsel for the defendant, and after hearing Mr. C., of counsel for the plaintiff, in opposition thereto, it is ordered that the execution issued in this action, be, and the same is hereby set aside with costs, and that the moneys levied thereon be restored to the defendant, with interest thereon from the time of such levy.

[No. 251.]

Order to consolidate actions.

At a special term, &c.

(Title of all the actions.)

On reading and filing affidavits in these actions, on motion of Mr. P., of counsel for the defendants, and after hearing Mr. S., of counsel for the plaintiff, it is ordered that all the proceedings on the part of the plaintiff, in these actions, (except the first,) be stayed, the said defendants hereby undertake to be bound by the verdict in the said first action, and to pay the amount in the complaints in said actions claimed, (state as to what particulars,) in case the said plaintiff shall recover in the said first action, together with the costs of that recovery, and (whatever terms the court may impose.)

[No. 252.]

Order on motion for a new trial.

At a special term, &c.

(Title of action.)

This action having been brought on to argument on motion of A. B., Esq., of counsel for defendant, and after hearing Mr. C., of counsel for plaintiff, it is ordered that a new trial be, and the same is hereby granted, with costs to abide the event.

[No. 253.]

Order setting aside nonsuit and for new trial.

At a special term, &c.

(Title of action.)

On motion of A. B., Esq., of counsel for plaintiff, after hearing C. D., Esq., of counsel for defendant, it is ordered that the nonsuit in this case be set aside and a new trial granted.

[No. 254.]

Order denying motion for new trial.

At a special term, &c.

(Title of action.)

This cause having been brought on to be heard, and after hearing counsel on both sides, ordered, that a new trial be denied.

[No. 255.]

Order for costs of circuit.

At a special term, &c.

(Title of action.)

On reading and filing affidavits and notice of this motion, together with proof of service thereof, on motion of A. B., Esq., of counsel for defendant, it is ordered that the defendant be allowed his costs of attending, prepared for trial of this action, at the last circuit court, held in the court house in Schenectady, in and for the county of Schenectady, on the first Monday of January last.

[No. 256.]

Order to strike out counts.

At a special term, &c.

(Title of action.)

On motion of B. D., Esq., of counsel for the defendant, (or plaintiff,) and after hearing D. C., Esq., of counsel for the plaintiff, it is ordered that the fourth and fifth folios in the complaint (or answer or reply) in this action, be, and the same is hereby stricken out, (with ten dollars costs.)

[No. 257.]

Order to set aside report of referees on the merits.

At a special term, &c.

(Title of action.)

This action having been brought to argument, on motion of M. B, of counsel for the plaintiff, and after hearing M. F., of counsel for the defendant, it is ordered * that the report made by the referees in this action, be, and the same is hereby set aside, with costs, (or costs to abide the event of the action.)

[No. 258.]

Order to confirm referees' report.

(As in the last form to the *, then) that the report of the referees herein be, and the same is, in all points confirmed.

[No. 259.]

Order for trial of a (feigned) issue.

At a special term, &c.

(Title of action.)

This action having been brought on to be heard on the pleadings herein, and the said pleadings having been read, and Mr. S. B., of counsel for the plaintiff, and Mr. X. Y., of counsel for the defendant, having been heard, it is ordered that the following issue be tried between the parties by a jury of the country, at the next circuit court, to be held in, and for the county of Saratoga, on the first Monday of January next, to inquire and determine whether (here set forth the issue to be determined,) and all further directions are reserved until after the trial of said issue.

[No. 260.]

Order to continue action by representatives of deceased party.

At a special term, &c.

(Title of action.)

On reading and filing a petition in this action duly verified, and on motion of K. R., Esq., of counsel for the petitioner, no one appearing to oppose it, it is ordered that this action be continued by the said E. C., administrator or executor of M. B., the deceased defendant, (or plaintiff.)

[No. 261.]

Order allowing supplemental pleading.

At a special term, &c.

(Title of action.)

On reading papers in this cause on both sides, and on motion of I. P., of counsel for the defendant, (or plaintiff,) after hearing Mr. W., of counsel for the plaintiff, (or defendant,) ordered that upon payment of ten dollars costs of this motion, within fifteen days, the supplemental answer, (or complaint or reply) served in this cause stand as the answer (or complaint or reply) therein, the issue to stand as of the 19th of March, 1851.

[No. 262.]

Order allowing amended pleading.

(As in the last form, except the word "supplemental" be changed to "amended.")

[No. 263.]

Order to attach sheriff.

At a special term, &c.

(Title of the action.)

On hearing Mr. O., of counsel for the plaintiff, and it appearing from the affidavit of plaintiff's attorney, that judg-

ment was rendered in said action, and docketed in Albany county, on the fifteenth of November, 1851, against the defendants, for five hundred dollars, damages and costs, and an execution in due form issued thereon to the sheriff of the county of Albany, W. B., Esq., and delivered to him the said sheriff, on the fifteenth day of November, and further showing that said sheriff has not made return thereof, as by law commanded:

Ordered, that an attachment issue against W. B., sheriff of the county of Albany, returnable before this court on the last Tuesday of February, 1852, at the City Hall, in the city of Albany, at the opening of court on that day, and also ordered that said sheriff be held to bail in the sum of one thousand dollars, and also that said sheriff, W. B., pay to said plaintiff or his attorney, ten dollars costs of this motion.

[No. 264.]

Order to attach witness.

At a circuit, &c.

(Title of action.)

On reading and filing affidavits showing that a subpœna was duly served upon C. B., on the fifth instant, whereby he was required to appear before this court on the sixth instant, to testify and give evidence in this action, on the part of the plaintiff, (or defendant,) and that the said C. B. has wholly neglected to attend as therein required, on motion of M. G. Esq., of counsel, ordered, that a writ of attachment issue, directed to the sheriff of the county of Albany, commanding him forthwith to attach the said C. B., and bring him forthwith personally before our circuit court in and for the county of Albany, at the City Hall in the city of Albany, to answer to us for certain contempts against us, in not obeying our writ of subpœna, and commanding the said sheriff to detain the said C. B. in his custody until discharged by our said circuit court.

[No. 265.]

Order for a mandamus.

At a special term (or general term,) &c.

Present, Hon. Ira Harris, (Malbone Watson and A. J. Parker,) justice.

The People, *ex rel* J. C.
vs.
B. P.

On reading and filing affidavits, on motion of M. R., Esq., counsel for the relator, after hearing Mr. A. B., in opposition thereto, it is ordered that a mandamus issue out of and under the seal of this court, directed to the said B. P., commanding him forthwith to (state what is to be done) or that he show cause to the contrary, before this court, at the City Hall, in the city of Troy, on the fourth day of February next.

[No. 266.]

Order for assessment of damages.

At a special term, &c.

(Title of action.)

Whereas it has been adjudged that the plaintiff recover judgment against the defendant in this action, but because it is unknown what amount of damages the plaintiff has sustained in the premises, it is ordered that it be referred to A. B., C. D., and E. F., Esqs. of the city of Schenectady, to inquire and ascertain what damages the said plaintiff has sustained herein, and to make returns under the hands and seals of them, or any two of them, with all convenient speed.

[No. 267.]

Order for leave to issue execution.

At a special term, &c.

(Title of action.)

On reading and filing affidavits and notice of motion, with proof of due service on the defendant, personally, on motion of Mr. C., of counsel for the plaintiff, ordered that the plaintiff have leave to issue execution in this action, notwithstanding the lapse of five years from the entry of the judgment herein.

[No. 268.]

Order of reference as to claims to surplus moneys.

At a special term, &c.

(Title of action.)

The sheriff's (or referee's) report of sale having been filed in this action, and the same having been confirmed, from which report it appears that there is a surplus in the hands of the clerk of this court, arising from said sale:

On reading and filing notice of claim, by W. D., to such surplus moneys, by virtue of a lien thereon under a junior mortgage, (or a judgment against) given by said defendant; on motion of Mr. H. S., of counsel for the said W. D., ordered that it be referred to C. E., Esq., as a referee, residing in Albany, to ascertain and report the amount due the said W. D., or to any other person which is a lien upon such surplus moneys, and as to the priorities of the several liens thereon; and it is further ordered that such referee summon before him, upon such reference, every party who has appeared in this action, and every person who has delivered written notice of his claim to such surplus moneys to the attorney for the plaintiff in this action, to the said referee or to the clerk of this court, or to the sheriff who made the sale, and that he cause them to have the usual notice of all subsequent proceedings, and that the said referee report thereon with all convenient speed.

[No. 269.]

Order to pay surplus moneys.

At a special term, &c.

(Title of action.)

On reading and filing the report of the referee herein, wherein it appears that said W. D. is entitled to the whole of the surplus moneys in this action, now in the hands of the clerk of the court, and on hearing Mr. H. S., of counsel for the said W. D., it is hereby ordered that the clerk of this court pay to the said H. S. ten dollars as costs of this application, and five dollars disbursements herein; and then the said clerk pay the said W. D., or his attorney, taking a receipt therefor, the balance of the said surplus moneys to wit: two thousand dollars.

[No. 270.]

Order to confirm referee's report of sale.

At a special term, &c.

(Title of action.)

On reading and filing the report of M. S., Esq., referee duly appointed to sell the premises described in the complaint in this action, and on filing proof of the service of the notice of this motion on all the parties who have appeared in this action: Ordered, that the said report be, and the same is hereby in all respects confirmed.

[No. 271.]

Order of reference in partition to take proof of title, and whether a sale is necessary.

At a special term, &c.

(Title of action.)

On reading and filing an affidavit, by which it appears that this action was commenced for the partition or sale of certain premises therein mentioned and described, and that

none of the adult defendants have appeared in this action, although more than twenty days have elapsed since the service of this summons upon the said several defendants, (or that all the adult defendants have put in their answers, in which the rights and interests of the several parties as stated in the complaint are not contested or denied,) and infant defendants, by their guardian, ad litem, having put in the usual general answer, on motion of H. B., of counsel for the plaintiff: Ordered, that it be referred to J. G., Esq., as a referee, residing in the city of Troy, to take proof of the plaintiff's title and interest in and to the premises in the said complaint mentioned, and of the several matters set forth in the said complaint, and to ascertain and report what share or part of the said premises belongs to each of the parties to this action, so far as the same can be ascertained, and the nature and extent of their respective rights and interests therein, and an abstract of the conveyances by which the same are held; and also to report whether the said premises, or any lot or separate parcel thereof, are so circumstanced that an actual partition cannot be made, and if the said referee arrives at the conclusion that a sale of the whole premises, or of any lot or separate parcel thereof will be necessary, that he specify the same in his report, together with the reasons which render a sale necessary; and in such a case that he also ascertain and report whether any creditor not a party to this action has a specific lien by mortgage, devise or otherwise, upon the undivided share or interest of any of the parties in that portion of the premises, which it is necessary to sell; and if he finds that there is no such specific lien in favor of any person not a party to the action, that he further inquire and report whether the undivided share or interest of any of the parties in the premises, is subject to any general lien or incumbrance, by judgment or decree.

And it is further ordered that the referee ascertain and report the amount due to any party to the action, who has either a general or specific lien on the premises to be sold, or any part thereof, and the amount due to any creditor not

a party, who has a general lien on any undivided share or interest therein, by judgment or decree, and who shall appear and establish his claim on such reference.

And it is further ordered that the said referee, if requested by the parties, or any one of them, who appear before him on such reference, shall also ascertain and report the amount due any creditor not a party to the action, which is either a specific or general lien or incumbrance upon all the shares, or interests of the parties in the premises to be sold, and which would remain as an incumbrance thereon in the hands of the purchaser.

[No. 272.]

Order of reference in foreclosure—all due, no infants or absent defendants.

At a special term, &c.

(Title of action.)

On filing proof of the personal service of the summons in this action, upon all of the defendants herein, and that no answer has been put in by any of the defendants herein, and that there are no infant defendants, or any defendants who are absentees, on motion of Mr. B., of counsel for the plaintiff: Ordered, that it be referred to G. H., Esq., of the city of New York, to compute and ascertain the amount due to the plaintiff, for principal and interest on the bond and mortgage set forth in the complaint in this action, and report the same to this court.

[No. 273.]

Order of reference in foreclosure—all due, and absent defendants.

At a special term, &c.

(Title of action.)

On filing proof of the personal service of the summons in this action, upon G. W., and T. J., and that the same has been served on the defendants, A. B. and C. D., who are

non residents of this State, (or who cannot be found therein) by the publication thereof as required by the statute, and the order of this court; and no answer to the complaint in this action having been put in by any of said defendants, (except G. W., whose answer admits all the rights and interests of the several parties, as stated in the complaint,) and the period for said defendants to answer having expired; on filing proof of such service, on motion of H. S., a counsel for plaintiff: Ordered that it be referred to B. W., of the city of Schenectady, as referee, to compute and ascertain the amount due to the said plaintiff, on the bond and mortgage mentioned in the said complaint; and to examine the said plaintiff on oath, as to any payments that may have been made to said plaintiff, or to any person for his use, on account of the demand mentioned in said complaint, and to report the amount so due, and also such proofs and examinations to this court, with all convenient speed.

[No. 274.]

Order of reference in foreclosure, all due, infant defendants, but no absentees.

At a special term, &c.

(Title of action.)

It appearing that the summons in this action has been personally served upon all the defendants in this action more than twenty days since, and that no answer has been received herein, except from J. G. and C. D., who are infants, and who have put in their general answer by B. C., their guardian; on motion of A. B., Esq., of counsel for the plaintiff, and after hearing B. C., Esq., guardian, *ad litem*, it is ordered that it be referred to B. W., &c., (as in the last form to the end.)

[No. 275.]

Order of reference in foreclosure, part not due.

At a special term, &c.

(Title of action.)

It appearing that the summons in this action has been served upon all the defendants, personally, in this action more than twenty days since, and that no answer has been put in by any of said defendants, except C. D., an infant defendant who appears by S. Q., his guardian, *ad litem*, and who has put in a general answer; and it appearing by the complaint herein, that this action was commenced to procure the foreclosure of a mortgage and a sale of the mortgaged premises therein described, and that a part of the debt secured by said mortgage and the bond accompanying the same is not yet due, it is ordered that it be referred to J. C., Esq., a counsellor of this court, residing in the city of Utica, to compute, ascertain and report the amount actually due to the plaintiff for principal and interest on said bond and mortgage, and which remains unpaid, including interest thereon to the date of this report, and also to take proof of the facts and circumstances stated in said complaint and report the same to this court; and also to ascertain and report the situation of the mortgaged premises, and whether in his opinion the same can be sold in parcels without injury to the interests of the parties; and if he shall be of opinion that a sale of the said premises, in one parcel, will be most beneficial to the parties, then that he report his reasons for such opinion.

[No. 276.]

Order to show cause why an attachment should not issue.

At a special term, &c.

(Title of action.)

On reading and filing affidavits, &c., and on motion of Mr. B., of counsel for the plaintiff (or defendant,) ordered

that the defendant (or plaintiff,) E. M., show cause on the next motion day of this court, at the City Hall, in the city of Albany, on the first day of March next, why an attachment should not issue against him, and he be punished for his alleged misconduct in violating the injunction issued in this action. And it is further ordered, that copies of the affidavits and other papers on which this motion is founded, be served upon the said E. M., personally, at least five days previous to the said first day of March.

[No. 277.]

Order for an attachment for contempt.

At a special term, &c.

(Title of action.)

On reading and filing affidavits, and on motion of Mr. B., of counsel for plaintiff, (or defendant,) and on hearing R. P., Esq., of counsel in opposition thereto: Ordered, that an attachment issue against the said E. M., returnable at the next motion term of this court, to be held at the City Hall, in the city of Albany, on the last Tuesday of March inst. And it is further ordered, that the said E. M. be held to bail in the sum of five hundred dollars.

[No. 278.]

Order for an injunction on complaint of interpleader.

At a special term, &c.

(Title of action.)

On reading and filing affidavits and a complaint of interpleader in this action, and on motion of B. C., of counsel for the plaintiff, after hearing Mr. L. and Mr. W., of counsel in opposition: Ordered, that an injunction issue pursuant to the prayer of the said complaint, upon the plaintiff paying into the hands of the clerk of this court the sum of one thousand dollars, mentioned in the said complaint.

[No. 279.]

Order to compel report of referees.

At a special term, &c.

(Title of action.)

On reading and filing affidavits in this action, and on motion of Mr. C., of counsel for the plaintiff, (or defendant): Ordered, that the referees appointed in this action, do report therein in ten days after service of a copy of this order, or show cause at the next special term of this court, to be held at the City Hall, in the city of Albany, on the last Tuesday of February next, why an attachment should not issue against them.

[No. 280.]

Order to strike action from the calendar.

At a general term, &c.

(Title of action.)

On reading and filing affidavits, and proof of service of notice of motion in this action, on motion of Mr. B., of counsel for the respondent, after hearing Mr. C., of counsel for the appellant: Ordered, that this cause be stricken from the calendar of this court, with costs, and that the respondent have judgment.

[No. 281.]

Order for judgment on frivolous answer or demurer.

At a special term, &c.

On application of Mr. R., plaintiff's attorney, and on notice of this application, and proof of service thereof on defendant's attorney, no one appearing to oppose, (after hearing R. M., of counsel for defendant,) ordered judgment against said defendant upon his answer (or demurrer) for the frivolousness thereof, with ten dollars costs of this motion, and further ordered judgment in this action in favor of said plaintiffs against the said defendant, for two hundred dollars with costs of this action.

[No. 282.]

Order appointing commissioners and for partition.

At a special term, &c.

(Title of action.)

This action having been brought on to be heard upon the report of A. B., a referee duly appointed, whereby the said referee reported that the premises mentioned in the complaint in this action may be partitioned and divided into four equal parts, without material injury to the rights and interests of the several owners thereof, and that a partition of such premises would be more advantageous to such owners than a sale thereof; whereby the said referee reported the said plaintiff entitled in fee to one equal undivided fourth part of said premises, the defendant, L. M., to one equal undivided fourth part thereof, the defendant, N. M., to one equal undivided fourth part thereof, and that the defendant, W. M., is entitled to the remaining undivided fourth part thereof. On motion of M. R., of counsel for the said plaintiff, no one appearing to oppose, after due notice, it is ordered and adjudged that the said report be, and the same is hereby ratified and confirmed.

And it is further ordered and declared, that the rights and interests of the several parties to this action, in and to the several lots, pieces or parcels of land described in the complaint in this action, are as stated and set forth in the said referee's report.

And it is further ordered and declared, that partition be made of the lands and premises mentioned and set forth in the complaint in this action, which premises are described as follows: (insert description,) among the parties to this action, according to their respective rights and interests, as the same were reported by the said referee, and have been thus ascertained by this court and established by this judgment.

And it is further ordered, that C. M., H. B. and L. S., three reputable freeholders of the county of Albany be, and they are hereby appointed commissioners for the purpose of

making such partition; that the said commissioners, before proceeding to the execution of their duties, as such, shall be severally sworn or affirmed before some officer authorized by law to administer oaths, honestly and impartially to execute the trust reposed in them, and to make partition as directed by this court; and that such oaths or affirmations be filed with the clerk of this court at or before the coming in of the report of the said commissioners hereinafter directed to be made; and that the said commissioners shall divide the said lands and premises into four equal parts, quantity and quality relatively considered, and that they allot to the plaintiff one of the said equal fourth parts of the said premises, to the defendants L. M., N. M. and W. M., each one of the said equal fourth part of the said premises, to be held and enjoyed by the said parties in severalty, according to their rights and interests therein so ascertained and determined as aforesaid; and that the said commissioners shall designate the part or portions so allotted to each of the said parties, and the boundaries thereof, by sufficient description and monuments.

And it is further ordered that the said commissioners, or any two of them, make a full and ample report to this court of their proceedings in this behalf, under their hands, specifying therein the manner in which they shall have obeyed this order, and describing the lands divided, and the parts or shares allotted to each party, with the quantity, courses and distances of each share, and a description of the posts, stones or other monuments thereof, and the items of their charges in the premises. That the said commissioners, or such two of them as shall sign the report, do acknowledge the same, or cause it to be proven in the same manner that deeds are required to be acknowledged or proven to entitle the same to be recorded, before some officer authorized to take the proof or acknowledgment of deeds, and that such report be filed in the office of the clerk of this court. That all the said commissioners do meet together in the performance of any of their duties under this order, but that the acts and decisions of a majority of such commissioners when so met, shall be valid.

And it is further ordered that the said commissioners be authorized to employ a surveyor, and to cause all necessary maps and surveys to be made. And all the parties in this action shall produce to and leave with the said commissioners for such time as the commissioners shall deem reasonable, all deeds, writings, surveys or maps relating to the said premises or any part thereof.

And it is further ordered and adjudged that in case partition of such premises cannot be made with perfect equality between the said parties, according to their respective rights and interests therein, unless compensation be made by one or more of the said parties to the other of them, for equality of partition, that then and in that case the said commissioners, or such two of them as may make said partition, ascertain and report the proper compensation which ought to be made for equality of partition; and by which of the parties the same should be paid and to which the same ought to be allowed. But the said commissioners shall not report compensation to be paid by an infant for equality of partition, unless it satisfactorily appears to them that he or they have sufficient personal estate to pay the same, and his or their shares of the costs and expenses of this action, and all other liens on his or their share of the premises, except in cases where, from the situation of the property and interests of the parties, it cannot be charged upon the share of an adult.

[No. 283.]

Oath of Commissioners.

Albany city and county, ss: We, C. M., H. B. and L. S., the commissioners within named, do severally swear that we will honestly and impartially execute the trust reposed in us, by the within order, and make partition as therein directed by the court.

C. M.
H. B.
L. S.

Subscribed and severally sworn before me, the 20th day of February, 1852,

M. M., Commissioner of Deeds.

[No. 284.]

Oath of referees.

(Title of action.)

Greene county, ss: We the referees appointed in this action, do swear that we respectively will faithfully and fairly hear and examine this action, and make a just and true report therein, according to the best of our understanding.

A. B.
C. D.
E. F.

Severally sworn, &c.

[No. 285.]

Petition for appointment of (prochein ami or) guardian for an infant plaintiff.

To the Hon. Ira Harris, one of the justices of the supreme court of the State of New York:

The petition of C. D., an infant under the age of twenty-one years, to wit, of the age of eighteen years, respectfully showeth:

That your petitioner is about to commence an action in the supreme court of the State of New York, against L. M., for (here state the cause of action.)

But as your petitioner is an infant, as above set forth, he prays that E. W., of the city of Troy, counsellor at law, a competent and responsible person, may be appointed to prosecute the said action for your petitioner, as his guardian, according to the statute in such case made and provided. Dated December 10, 1851.

C. D.

Consent annexed.

I consent to become the guardian of C. D., in the action mentioned in the foregoing petition.

Dated December 11, 1851.

E. W.

[No. 286.]

Petition for appointment of guardian of an infant defendant.

To Hon. Ira Harris, one of the justices of the supreme court of the State of New York:

The petition of B. P., an infant under the age of twenty-one years; to wit, of the age of nineteen years, respectfully showeth:

That an action has been commenced against your petitioner in the supreme court of the State of New York, by J. S., for (here state cause of action.)

But as your petitioner is an infant as above set forth, he prays that W. C., of the city of Schenectady, a merchant, may be appointed the guardian of your petitioner, in the defence of said action, according to the statute in such case made and provided. Dated January 2, 1852.

B. P.

Consent annexed.

I consent to become the guardian of B. P., in the defence of the action mentioned in the foregoing petition.

Dated January 3, 1852. W. C.

[No. 287.]

Petition to compel the discovery and production of papers.

To the Hon. Ira Harris, one of the justices of the supreme court:

The petition of E. W. respectfully showeth, that an action has been commenced in the said supreme court by (or against) your petitioner, against (or by) F. X., by the service of a summons for (here state the cause of action.)

And your petitioner further shows, that a certain paper writing (here describe the paper sufficiently to identify it) is in the custody or under the control of the said F. X. (or E. W.,) as your petitioner expressly charges and verily believes.

And your petitioner further shows, that the said paper writing is material to enable your petitioner to prepare his complaint (answer, or reply, or for trial) in said action; and that your petitioner cannot safely prepare his complaint (answer, or reply, or for trial) without the said paper writing, as he is advised by his counsel and verily believes.

Wherefore your petitioner prays your honor to grant him an order, pursuant to the statute in such case made and provided, requiring the said F. X. (or E. W.,) to give to your petitioner, within a specified time, an inspection and copy of the said paper writing, above mentioned, so as to enable your petitioner to prepare his complaint (answer, or reply, or for trial) in the said action.

(When the object of discovery is to prepare for trial, then insert immediately after, a description of the nature of the action, the following: "and the said action is at issue on the pleadings served in the said action.")

[No. 288.]

Petition to be admitted to sue in forma pauperis.

To the justices of the supreme court of the State of New York:

The petition of A. B., of the city of Troy, respectfully showeth that C. G., of the city of Schenectady, is justly indebted to your petitioner in the sum of five hundred dollars for, &c., (here state the grounds of the claim) and your petitioner has not commenced an action against him for the same, being unable to carry on his action, as will appear by the affidavit of your petitioner hereunto annexed.

Your petitioner therefore prays that he may be admitted to prosecute an action against the said C. G. for the recovery of the said demand in *forma pauperis*, according to the form of the statute in such case made and provided, and this honorable court will assign to him an attorney and counsellor of this court to prosecute his said action.

A. B.

Affidavit annexed.

City of Troy, ss: A. B., the above named petitioner, being sworn says, that he is not worth twenty-five dollars in the world, save and except his wearing apparel, and his demand against the said C. G., set forth in the foregoing petition, and that he knows the contents of the foregoing petition by him subscribed, and that the same is true.

A. B.

Sworn, &c.

Certificate of Counsel.

To the Supreme Court:

I have examined the claim of the above named petitioner against C. G., set forth in the foregoing petition, and believe he has a valid demand and a good cause of action thereon against the said C. G.

X. V., Counsellor, &c.

[No. 289.]

Complaint against maker of a note.

Supreme Court.—County of Greene.

A. B. } *ag't* C. D. }

The above plaintiff complains that the above named defendant, on the fourth day of March, 1850, by his promissory note, in writing, for value received, promised to pay to this plaintiff the sum of five hundred dollars, twenty days from the date thereof, and that he has not paid the same nor any part thereof, but is justly indebted to the plaintiff therefor; whereupon the plaintiff demands judgment against the said defendant for five hundred dollars, with interest thereon from the twenty-seventh day of March, one thousand eight hundred and fifty, besides costs of this action.

L. M., Plaintiff's Attorney,
Coxsackie.

County of Greene, ss: A. B. the plaintiff, being sworn, says, the foregoing complaint is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters he believes it to be true. A. B.

Sworn before me this }
Feb. 27, 1852, }
B. P., Justice of the Peace.

[No. 290.]

Complaint against maker and endorser of note.

SUPREME COURT.—County of Rensselaer.

A. B. and C. D., }
agt. }
E. F., G. H. and J. K. }

The above named plaintiffs complain that the defendant, E. F. on the first day of January, 1850, at Albany, by his promissory note, in writing, for value received, promised to pay to the defendants G. H. and J. K., or their order, the sum of three hundred dollars, thirty days from the date thereof, and the defendants G. H. and J. K. by the style of H. & Co., afterwards for value received, endorsed the said note, and the same was thereupon, for valued received, transferred to the said plaintiffs. That payment of said note was duly demanded at maturity, and the same was thereupon duly protested for non-payment, and notice thereof duly given to the said endorsers, the expense of which protest was the sum of seventy-five cents. That said defendants have never paid the said note, or any part of it, but are justly indebted to the plaintiffs therefor. Whereupon the plaintiffs demand judgment against the defendants for three hundred dollars, with interest from the fourth day of February, one thousand eight hundred and fifty, besides costs of this action, and said seventy-five cents notary's fees.

A. L., Plaintiffs' Att'y, Albany.

[No. 291.]

Complaint on check against maker.

(Title of action.)

The above named plaintiff complains that the defendant, for value received, on the first day of March, 1851, made his check in writing, dated that day, directed to the Albany Exchange Bank, and thereby directed and required the said bank to pay to the plaintiff, or bearer, on demand, the sum of one hundred dollars, and the defendant then delivered the said check to the plaintiff. And the plaintiff says, that after the making of the said check, and on the first day of March aforesaid, the said check was presented to the said bank, and payment demanded therefor; but the said bank have not paid the said check, or any part thereof, of which defendant had due notice; nor has the said defendant paid the same, or any part thereof. Wherefore the plaintiff demands judgment against the said defendant for the sum of one hundred dollars, and interest thereon from the first day of March, one thousand eight hundred and fifty-one, together with costs of this action.

M. R., Plaintiff's Att'y, Troy.

[No. 292.]

Complaint on check against maker and endorser.

(Title of action.)

The above named plaintiff complains that the defendant, G. H,, for value received, on the first day of March, 1851, made his draft or check in writing, dated that day, directed to the Albany City Bank, and thereby directed and required the said Bank to pay to the defendant, L. M., or order, the sum of one hundred dollars, and the said defendant, L. M., for value received, afterwards endorsed the said check, and the same was, for value received, delivered to the said plaintiff. That payment of said check was duly demanded,

and the same was thereupon duly protested for non-payment, and notice thereof duly given to the said endorser, the expense of which protest was the sum of seventy-five cents. That said Bank or said defendant have never paid the said check or any part of it, but said defendants are justly indebted to the plaintiffs therefor; whereupon the plaintiff demands judgment against the defendant for one hundred dollars, with interest from the first day of March, one thousand eight hundred and fifty-one, besides costs of this action and said seventy-five cents notary's fees.

M. R., Plaintiff's Att'y,
New York.

[No. 293.]

Complaint on bill of exchange against acceptor.

(Title of action.)

The plaintiff, in this his complaint, shows to the court that on the first day of July, 1850, one C. B., of the city of Buffalo, made his draft or bill of exchange in writing and directed to the defendant, and thereby required the said defendant, two months after the date thereof, to pay to the plaintiff or order the sum of one hundred dollars and interest thereon from the date thereof, and the said defendant afterwards and for value received, accepted the said draft or bill, and for value received transferred the same to the plaintiff. But the said defendant has not paid the same nor any part thereof, but is justly indebted to the plaintiff therefor in the sum of one hundred dollars and interest thereon from the first day of July, one thousand eight hundred and fifty, together with costs of this action, and for which sum, interest and costs the plaintiff demands judgment.

R. P., Plaintiff's Att'y,
Buffalo.

[No. 294.]

Complaint on bill of exchange, acceptor against drawer.

(Title of action.)

This plaintiff, in this his complaint says, that these defendants are indebted to him for certain moneys advanced by this plaintiff and by him paid in taking up a certain draft drawn by these defendants, by the style of J. B. & Co., for two hundred dollars and interest, dated July 10, 1850, payable ten days after date, and accepted by this plaintiff and by him paid at maturity, without funds in plaintiff's hands to meet the same.

Wherefore he demands judgment against said defendants for two hundred dollars and interest thereon from July tenth, one thousand eight hundred and fifty, with costs of this action.

M. R. Plaintiff's Att'y, Utica.

[No. 295.]

Complaint on bill of exchange, against acceptor, drawer and endorser.

(Title of action.)

This plaintiff in his complaint, shows that the defendant, A. B., at Buffalo, made his draft, or bill of exchange, bearing date January 5, 1850, directing and requiring the defendant C. D., for value received, to pay to the order of defendant, E. F., the sum of one thousand dollars, and interest, ten days from the date thereof, and the said defendant, C. D., for value, accepted the said draft, and the same was, for value received, endorsed by the said E. F., and by him, for value, transferred to the said plaintiff: That payment of the said draft was duly demanded at maturity, and the same was thereupon duly protested for non-payment, and notice thereof duly given to the said drawer and endorser, the expense of which protest was seventy-five cents: That said defendants have never paid said draft, or any part

thereof, but are justly indebted to the plaintiffs therefor, whereupon the plaintiff demands judgment against the said defendants for one thousand dollars, and interest thereon from the fifth day of January, one thousand eight hundred and fifty, with costs of this action, and said seventy-five cents, notary's fees.

B. C., Plaintiff's Att'y,
Albany.

[No. 296.]

Complaint on bill of exchange against maker for non-acceptance.

(Title of action.)

This plaintiff in his complaint says, that the defendant on the first day of July, one thousand eight hundred and fifty-one, for value received, made his draft or bill of exchange and directed the same to one A. B., requiring the said A. B. to pay to the defendant, sixty days from the date thereof, the sum of five hundred dollars and interest from the date thereof, and for value the said defendant transferred the same to the plaintiff; that the said draft was duly and in due time presented the said A. B., and duly protested for the non-acceptance thereof, and notice thereof given to the said defendant; the expense of which protest is the sum of seventy-five cents. That said defendant has not paid the said draft or any part thereof. Whereupon the plaintiff demands, &c., (as in the usual form.)

[No. 297.]

Complaint for work, labor and services.

(Title of action.)

The complaint of this plaintiff shows to this court, that the above named defendant is indebted to him for the work, labor and services of the plaintiff, from the first day of May,

1850, to the first day of May, 1851, in the sum of three hundred dollars, and interest thereon from the first day of May, one thousand eight hundred and fifty-one, for which sum, with the costs of this action, the plaintiff demands judgment.

R. M., Plaintiff's Att'y,
New York.

[No. 298.]

Complaint for goods sold and delivered.

(Title of action.)

The complaint of the plaintiff, respectfully shows, that the said defendant is indebted to this plaintiff for goods, wares and merchandise, to wit: law books, blank books and stationery, heretofore sold and delivered by this plaintiff to the said defendant at divers times, amounting to five hundred dollars, and interest thereon from the sixth day of June, 1847. Wherefore the said plaintiff demands, &c., (as in the usual form.)

[No. 299.]

Complaint for use and occupation.

(Title of action.)

This plaintiff in his complaint says, that the said defendant is indebted to this plaintiff for the use and occupation of certain rooms in the atheneum building, from the first of May, 1849, to the first day of May, one thousand eight hun dred and fifty, at the yearly rent of two hundred dollars.

Wherefore, he demands judgment, &c. (as in the usual form.)

[No. 300.]

Complaint on bond for payment of money.

(Title of action.)

This plaintiff complains of the defendant and says, that on the tenth day of July, 1849, the said defendant made his

certain bond or writing obligatory, sealed with his seal, and in the words and figures following, to wit: (here set forth copy bond.) And the plaintiff further says, that said defendant has not paid the sum in the said writing obligatory mentioned, or any part thereof, although often requested so to do, but is justly indebted to the plaintiff therefor. Whereupon the said plaintiff demands judgment, &c. (as in the usual form.)

[No. 301.]

Complaint on undertaking on appeal.

(Title of action.)

The above named plaintiff in this his complaint says, that heretofore and on or about the twentieth day of March, 1849, he recovered a judgment in the Mayor's court of the city of Albany, (or Albany county court, or Supreme court,) against one O. M., as appears by the record thereof in the clerk's office of the county of Albany, from which judgment the said M. appealed to (the general term of) the Supreme court, and that on such appeal the said defendant R. D. and S. E. in their proper persons became pledges and bail for said M. in the said action then pending, by an undertaking under the code of procedure in manner and form following, that is to say, that if the said M. should pay all costs and damages, which might be awarded against him on the said appeal, not exceeding two hundred and fifty dollars, and also if the said judgment appealed from, or any part thereof, be affirmed, the said M. would pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, then the obligation to be void, otherwise to remain in full force and effect. And this plaintiff further says, that afterwards the judgment mentioned and referred to in the said undertaking and in this complaint mentioned, as recovered against the said M.,

was wholly affirmed by the Supreme court, with costs of the appeal, and the costs on the said appeal awarded against the said M. amount to one hundred dollars, and that the amount of said judgment and interest thereon and costs so awarded, is two hundred and thirty dollars, which by the said Supreme court was then and there adjudged to this plaintiff, as appears by the record and docket of the said judgment duly entered and docketed in the office of the clerk of the county of Albany, on the nineteenth day of September, 1851; that execution thereon, issued to the sheriff of said county of Albany, for the collection of said two hundred and thirty dollars which was returned by said sheriff wholly unsatisfied, and nothing has been collected or paid on said judgment, but the same is in full force, strength and effect, wholly unsatisfied, whereby an action has accrued to this plaintiff to have and receive the said sum of money of these defendants, according to the tenor and effect of the said undertaking.

Nevertheless, the said defendants have not paid the said plaintiff the said sum of money, nor any part thereof, but are justly indebted to the plaintiff therefor in the sum of two hundred and thirty dollars, and interest thereon from the nineteenth day of September, 1851, wherefore he demands judgment against the said defendant for the sum of two hundred and thirty dollars, and interest thereon from the nineteenth day of September, one thousand eight hundred and fifty one, together with costs of this action.

L. M., Plaintiff's Att'y,
Albany.

[No. 302.]

Complaint on bond other than for payment of money.

(Title of action.)

This plaintiff in his complaint, says, that the said defendant, on the tenth day of October, 1849, made his certain bond or writing obligatory, sealed with his seal, and in

the words and figures following, to wit: (copy bond.) Nevertheless, the said plaintiff in fact says, that after making the said bond or writing obligatory, the said defendant did on (here set forth the several breaches made by the defendant.) By means of which said several premises, this plaintiff has sustained damages to a large amount, to wit, to the amount of five hundred dollars, whereby an action has accrued to him, the said plaintiff, to demand and have of and from the said defendant, the sum of five hundred dollars. Yet the said defendant (although often requested so to do,) has not as yet paid the said sum of five hundred dollars, above demanded, or any part thereof, to the said plaintiff, but has hitherto wholly neglected and refused, and still neglects and refuses so to do, to his damage of five hundred dollars. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 303.]

Complaint by husband and wife on bond to wife before coverture.

A. B., and M. his wife,
agt.
C. H.

These plaintiffs, in their complaint, say, that the said defendant heretofore, and whilst the said M. was sole and unmarried, to wit, on the fifth day of June, 1849, at Utica, by his certain bond or writing obligatory, sealed with his seal, and in the words following, that is to say, (here copy bond.) Yet the said defendant, although often requested so to do, has not as yet paid the said sum above demanded, or any part thereof, to the said M., while she was sole and unmarried, or to the said plaintiffs or either of them since their intermarriage, but has hitherto wholly neglected and refused, and still does neglect and refuse to pay the same, or any part thereof, to these plaintiffs, or either of them. Whereupon they demand judgment, &c., and (as in the usual form.)

[No. 304.]

Complaint by executor on policy of life insurance.

A. B., executor of the last will and testament of C. D., deceased, *agt.* F. E. insurance company.

This plaintiff in his complaint, says, that the defendant, at the request and for the benefit of C. D., on the first day of May, 1848, made their writing obligatory, or policy of insurance, under their respective seals, in the words and figures following, (insert policy) which said policy of insurance the said defendant on the said first day of May, did for the consideration or premium therein expressed, deliver to the said C. D.; and the plaintiff further says, that the said C. D. duly, and in due time paid the annual premiums mentioned in the said policy, from the time of making the said policy until the time of his decease.

And this plaintiff further says, that the said C. D. departed this life, but not by his own hands, or the hands of justice, the sixth day of June, 1850, having previously, and on the tenth day of January, 1850, made his last will and testament in due form, thereby appointing this plaintiff the executor thereof; which said last will and testament has been duly proved by the surrogate of the county of Greene, and letters testamentary duly issued to this plaintiff on the first day of July, 1850.

And this plaintiff further says, that the defendants have not paid the said sum of five thousand dollars, nor any part thereof. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 305.]

Complaint on policy of insurance of goods, &c.

(Title of action.)

The plaintiff in his complaint, shows that the said defendants heretofore, and on the twentieth day of July, 1851, made a certain deed, poll, or policy of insurance, and sealed

with the seal of the defendants, in the words and figures following, (insert policy) which said deed, poll or policy of insurance, the said defendants, on the said twentieth day of July, delivered to this plaintiff, upon his paying to the said defendants the amount of premium, as in the said policy expressed and set forth, and that thereupon the said defendants became the insurers to the said plaintiff for the sum of one thousand dollars, in the said policy of insurance set forth, of the goods, wares and merchandise in the said building, in the said policy mentioned.

And this plaintiff further says, that at the time of insuring the said goods, wares and merchandise, he was the sole owner thereof, and so continued the sole and exclusive owner till the same were destroyed by fire on the sixth day of December, 1851. (Next aver the cause of the fire, loss and destruction of the goods, and the facts as to the compliance of the terms as to proof of loss, to entitle the plaintiff to recover,) by reason whereof an action has accrued to the said plaintiff to have, and demand of and from the said defendants, the said sum of one thousand dollars, so insured as aforesaid, and interest thereon. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 306.]

Complaint against lessee for rent.

(Title of action.)

This plaintiff complains of the defendant, and shows, that heretofore and on or about the first day of May, 1850, he rented to the defendant herein, a store and dwelling known and distinguished as lot No. 42 Green street, in the city of Utica, at the yearly rent of two hundred dollars, payable quarterly, which said sum this defendant, by an agreement in writing by him signed, agreed to pay; and that having so hired the said premises, the said defendant entered and occupied, but has not paid the rent for the same for the first

two quarters of the said year, amounting to one hundred dollars and interest thereon from the first day of November, 1851. Whereupon he demands judgment, &c., (as in the usual form.)

[No. 307.]

Complaint for the non-delivery of goods sold.

(Title of action.)

The plaintiff in his complaint says, that on the third day of July, 1851, he bought of the defendant one thousand barrels of flour at the price or sum of five dollars per barrel, which said flour the said defendant then and there sold to this plaintiff, and agreed to deliver to this plaintiff, at his store, in the city of Schenectady, on or before the tenth day of July, aforesaid, on the following terms, to wit: the payment of three hundred dollars at the time of such sale, and the balance in ten days from the delivery of the said flour; and this plaintiff further says, that he paid to the said defendant the said sum of three hundred dollars, and is still ready and willing to fulfil and perform his part of the said contract, but the said defendant, although sufficient time has elapsed therefor, has failed to fulfil his part of the said agreement, and does still neglect and refuse to perform the same, to the great damage of this plaintiff, to wit: to the damage of five hundred dollars. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 308.]

Complaint against Carrier for loss of goods.

(Title of action.)

This plaintiff says, that this defendant is a common carrier of goods and chattels for hire, and that this plaintiff, on the first day of June, 1849, delivered to the said defendant as such common carrier, in the city of Buffalo, five hundred

bushels of wheat, to be carried and transported by the said defendant for the said plaintiff, from the said city of Buffalo to the city of New York, and to be delivered to this plaintiff at the city of New York on or before the first day of August, 1849; and the defendant so received the said wheat, and promised safely to convey the same as aforesaid, yet the defendant so carelessly and negligently conducted himself in that behalf that the said wheat was wholly lost to the plaintiff, to his damage of six hundred dollars; wherefore he demands judgment, &c. (as in the usual form.)

[No. 309.]

Complaint against an agent for not accounting.

(Title of action.)

This plaintiff in his complaint says, that heretofore and on or about the tenth day of July, 1850, he shipped from the port of New York, consigned to this defendant B. P. then his agent at Mobile, to sell for cash, a large quantity of goods, wares and merchandize, amounting in value to ten thousand dollars, of which consignment said B. P. had notice and was advised, and which agency for a valuable consideration said B. P. undertook and entered upon, and proceeded and sold all of said goods, wares and merchandize on account of the plaintiff, and yet although sufficient time has elapsed therefor, the said B. P. has neglected and refused, and still neglects and refuses to render a just and true account of such sale and of the produce thereof to this plaintiff, and has also neglected and refused to pay over to this plaintiff the proceeds arising from such sale, or any part thereof; wherefore he demands judgment, &c. (as in the usual form.)

[No. 310.]

Complaint against agent for selling on credit.

(Title of action.)

These plaintiffs complaining, state, that on or about the sixteenth day of July, 1850, thirty thousand pieces of sawed lumber, containing three hundred thousand feet, belonging to these plaintiffs, were shipped from the port of New York, consigned to defendant, P. B., then their agent at San Francisco, California, to sell for cash, of which consignment said B. had notice, and which agency for a valuable consideration, said B. undertook and entered upon, and proceeded and sold said lumber to S. & Co. at the price or sum of about fifty thousand dollars, in or before the month of December, 1850, and made delivery thereof to them; which said sale instead of being for cash, as was said B.'s duty to do, was without any authority, instruction or permission for so doing, sold on time, as above stated, and without retaining any lien thereon; which said sale was in violation of the trust and duty reposed in said B.; and afterwards, to wit, on or about the third day of July, 1851, said S. & Co. failed, and became, and were wholly unable to pay for said lumber, having paid nothing thereon which has come to the use or possession of these plaintiffs, or any of them.

These plaintiffs further state, that they have been informed and believe, that some portion of said balance has come to the hands, possession or use of said B., but how much they are not informed, and of which they can obtain no account from said B., though they have often requested him so to do, and have repeatedly demanded of him any money he may have so received, but this request he has neglected or refused to comply with. It was the duty of said agent as aforesaid, to have sold for cash only, and to have remitted the proceeds, or paid over the same on demand.

These plaintiffs further say, that by said breaches of duty and of confidence on the part of said B. as agent, as aforesaid, and by reason of the premises aforesaid, they the said plaintiffs sustain damage to the amount of fifty thousand

dollars, with interest thereon from January 1, 1851, for which the said B. became liable to them, and for which a right of action accrued to them, to have and recover the same of the said B., and the same remains due to these plaintiffs, and is wholly unpaid, and no set off against the same; whereby and by reason of the premises these plaintiffs demand judgment, &c., (as in the usual form.)

[No. 311.]

Complaint against bailee for not taking care of goods.

(Title of action.)

This plaintiff in his complaint, says, that on the first day of May, 1850, he delivered to the defendant a large quantity of goods, wares and merchandize, of the value of five hundred dollars, to be by the defendant safely and securely kept for the plaintiff, and to be returned and re-delivered to the said plaintiff when the said defendant should be afterwards requested; although the said defendant received the said goods, wares and merchandise from the plaintiff, as aforesaid, and although the said defendant was afterwards, to wit, on the first day of December, 1850, requested by the said plaintiff to redeliver the said goods, wares and merchandize to him the said plaintiff: Yet the said defendant, not regarding his promise and undertaking, did not, nor would take due and proper care of and safely and securely keep the said goods and chattels, or any part thereof, for the said plaintiff, nor did nor would at the same time when he was so requested as aforesaid, or at any time afterwards, redeliver the same to the said plaintiff; but on the contrary thereof, he the said defendant so negligently and carelessly conducted himself, with respect to the said goods, wares and merchandize, and took so little care thereof, that by and through the mere carelessness, negligence and improper conduct of the said defendant, and his servants in that behalf,

that the said goods, wares and merchandize, being of the value aforesaid, were wholly lost to the said plaintiff, to his damage of five hundred dollars. Wherefore he demands judgment, &c. (as in the usual form.)

[No. 312.]

Complaint for breach of promise to marry.

(Title of action.)

This plaintiff, in his complaint, shows to the court, that on the fifteenth day of June, 1849, in consideration that the plaintiff, who was then sole and unmarried, at the request of the defendant, would marry him on request; the defendant promised to marry the plaintiff on request: And the said plaintiff, confiding in the said promise and undertaking of the said defendant, has always from thence hitherto, remained and continued and still is sole and unmarried, and has been * and still is, ready and willing to marry the said defendant. And although the said plaintiff, after the making of the said promise and undertaking of the said defendant, to wit, on the first day of December, 1849, and at divers other times, requested the said defendant to marry her, the said plaintiff, yet the said defendant, not regarding his said promise and undertaking, did not, nor would at the said time or times when he was so requested as aforesaid, or at any time before or afterwards, marry her the said plaintiff, but has hitherto wholly neglected and refused to do, and still neglects and refuses so to do, to the damage of the plaintiff of five thousand dollars. Whereupon she demands judgment, &c., (as in the usual form.

[No. 313.]

Another form.

(As in the last to the *, then) ready and willing to marry the said defendant. Yet the said defendant not regarding

his said promise and undertaking, and after the making of the same, to wit: on the sixth day of June, 1850, wrongfully and injuriously married a certain other person, to wit: one C. P., contrary to his said last promise and undertaking, so by him made as aforesaid, to the damage of the plaintiff of five thousand dollars. Wherefore she demands judgment, &c., (as in the usual form.)

[No. 314.]

Complaint against a mechanic for doing his work badly.

(Title of action.)

This plaintiff complains of the defendant and says, that on or about the first day of March, 1850, by a certain agreement then made by and between the said plaintiff and the said defendant, it was agreed that the said defendant should take down a certain dwelling house in the city of Utica, and should build another dwelling house for the said plaintiff, agreeably to certain plans thereof, then in the possession of the said defendant; and that the said contract or agreement was in the words and figures following: (set out copy contract.) And although the said defendant did, afterward and before the commencement of this action, erect and build the said dwelling house, with the appurtenances, for the said plaintiff, yet the said defendant not regarding his said agreement, although the said plaintiff has performed his part of said contract, but contriving and intending to defraud and deceive the said plaintiff in this behalf, did not, nor would erect or build the said house agreeably to the said plans, agreement and particulars, with good and proper materials, and in a sound, substantial and workmanlike manner, but wholly neglected and refused so to do; and on the contrary thereof he, the said defendant, erected and built the said last mentioned house with the appurtenances different from and contrary to the said plans and agreement and particulars, and with bad and improper materials, and

in a slight, weak, inartificial and unworkmanlike manner, contrary to the form and effect of the said plans, agreement and undertaking, to the damage of the plaintiff of two thousand dollars. Whereupon he demands judgment, &c., (as in the usual form.)

[No. 315.]

Complaint against inn keeper for loss of a trunk.

(Title of action.)

The plaintiff in his complaint says, that the defendant on the third of March, 1851, and from that time hitherto had kept a certain inn or hotel, known as the Dunlop House, in the city of Schenectady, and this plaintiff on the third day of March aforesaid, put up and was received at the said hotel as a traveller by this defendant, and then and there brought into the said hotel and delivered to the defendant a trunk, belonging to the plaintiff, containing wearing apparel and other articles of the said plaintiff, of the value of one hundred dollars; which said trunk with the contents thereof remained in the said hotel until the loss thereof; this plaintiff, during all the time, remaining as a traveller in said hotel. And the plaintiff further says, that by the carelessness, negligence and bad behavior of the said defendant or his servants, the said trunk with its contents was afterwards, and sometime in the month of March aforesaid, wrongfully taken and carried away by some person or persons wholly unknown to the plaintiff, and thereby was wholly lost to the plaintiff, to his damage of one hundred dollars. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 316.]

Complaint for keeping a dog used to bite mankind.

(Title of action.)

This plaintiff in his complaint says, that the said defendant on the fifth day of July, 1851, at Troy, wrongfully kept

a dog which he the said defendant well knew was accustomed * to attack and bite mankind, and which dog at the time and place aforesaid attacked and bit the plaintiff, and did then and there greatly lacerate, hurt and wound one of the legs of the said plaintiff, whereby the said plaintiff became sick, sore and lame, and so remained and continued for a long space of time, to wit, for six weeks then next following; during which time he the said plaintiff thereby suffered and underwent great pain, and was thereby prevented from performing and transacting his regular business; and also by means of the premises the said plaintiff was put to great expense, cost and charges, in the whole amounting to the sum of two hundred dollars in and about endeavoring to be cured of the said wounds, sickness and lameness and disorder so occasioned, and hath been and is by means of the premises otherwise greatly injured and damnified, and that the amount of such loss and injury is the sum of three hundred dollars. Wherefore he demands judgment, &c. (as in the usual form.)

[No. 317.]

Complaint for keeping a dog accustomed to bite sheep and other animals.

(As in the last form to the *, then) to hunt, chase, bite, worry and kill sheep and lambs, which said dog on the day and year aforesaid, and on divers other days and times between that day and the commencement of this action, did hunt, chase, bite and worry one hundred sheep and lambs of the plaintiff, being of the value of two hundred dollars, by means whereof divers, to wit: fifty of the said sheep and lambs of the said plaintiff, being of the value of one hundred dollars, then and there died, and became of no value to the said plaintiff, and the residue of the said sheep and lambs of the said plaintiff, being also of great value, were then and there greatly terrified, damaged and injured, and rendered of

no use or value to the said plaintiff, to the damage of the defendant of two hundred dollars. Whereupon he demands judgment against, &c., (as in the usual form.)

[No. 318.]

Complaint for libel.

(Title of action.)

This plaintiff in his complaint says, that this defendant, on the third day of July, 1850, contriving, and wickedly and maliciously intending to injure this plaintiff in his good name, fame, and credit, and to bring him into public scandal, infamy and disgrace, with and amongst all his neighbors and other good and worthy citizens, and to cause it to be suspected and believed by those neighbors and citizens, that the said plaintiff had been and was guilty of the offences and misconduct hereinafter mentioned to have been made and charged upon him by the said defendant; and to vex, harrass and oppress him, the said defendant did, on the third day of July aforesaid, at Utica, * falsely, wickedly, and maliciously compose and publish, and cause and procure to be published in a newspaper called the Palladium, of and concerning him, the said plaintiff, a false, scandalous, malicious and defamatory libel, containing amongst other things, the false, scandalous, malicious, defamatory and libellous matter following, of and concerning the said plaintiff; that is to say, (here set forth the libellous matter, with the inuendoes, &c.) By means of committing of which said several grievances, by the said defendant, the plaintiff hath been and still is greatly injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace, with and amongst all his neighbors, and other good and worthy citizens, (set forth special damage,) to the damage of this plaintiff of five hundred dollars. Wherefore he demands judgment, &c., (as in the usual form.)

[No. 319.]

Complaint for slander.

(As in the last form to the * then) in a certain discourse which the defendant then and there had in the presence and hearing of divers good and worthy citizens, falsely and maliciously spoke and declared of and concerning the said plaintiff, and of and concerning the said plaintiff in the way of his said profession and business, these false, scandalous, malicious and defamatory words following, that is to say: (here state the words in as many different forms as possible in order to meet every probable circumstance of the case.) By means of the committing of which said several grievances by the said defendant as aforesaid, the said plaintiff has been and still is greatly injured in his good name and credit, and also greatly injured in his profession and business, and brought into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens, (set forth special damage, if any,) to the damage of this plaintiff of one thousand dollars. Wherefore he demands, &c., (as in the usual form.)

[No. 320.]

Complaint for crim. con. with plaintiff's wife.

(Title of action.)

This plaintiff complains of the defendant and says, that the said defendant contriving and wrongfully and wickedly and unjustly intending to injure the said plaintiff, and to deprive him of the comfort, fellowship and assistance of the wife of him the said plaintiff, and to alienate and destroy her affection for him the said plaintiff, heretofore and on the 16th day of June, 1851, and on divers other days and times since said sixteenth day of June, wrongfully, wickedly and unjustly debauched and carnally knew the said Bridget, being the wife of the said plaintiff, and thereby the affection

of the said Bridget for him the said plaintiff was then and there alienated and destroyed, and also by reason of the premises, the said plaintiff hath hence hitherto wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of the said Bridget, his said wife, in his domestic affairs, which the said plaintiff ought to have had and otherwise would have had, to the great damage of this plaintiff of five thousand dollars. Wherefore he demands, &c. (as in the usual form.)

[No. 321.]

Complaint for debauching daughter or servant of the plaintiff.

(Title of action.)

This plaintiff in his complaint says, that the said defendant contriving and wrongfully and unjustly intending to injure the said plaintiff, and to deprive him of the assistance and service of Bridget the daughter and servant of the said plaintiff, on the tenth day of April, 1850, and at divers other days and times since said tenth day of April, at Troy, debauched and carnally knew the said Bridget, whereby the said Bridget became pregnant and sick with child, and so remained and continued for a long space of time, to wit, for the space of nine months then next following, at the expiration whereof the said Bridget was delivered of the child with which she was so pregnant as aforesaid, by means of which said several premises, she the said Bridget for a long space of time, to wit, for the space of two years, became and was unable to do or perform the necessary affairs and business of the said plaintiff, so being her father and master as aforesaid, and thereby the said plaintiff lost and was deprived of the service of his daughter and servant, and also by means of the said several premises, the said plaintiff was forced and obliged to and necessarily did pay, lay out and expend divers sums of money, amounting to three hundred dollars in and about the care and nursing of the said Bridget his said daughter and servant, and in and about the delivery

of the said child, to the damage of this plaintiff of seven hundred dollars. Wherefore he demands, &c.

[No. 322.]

Complaint for infringement of trade mark.

(Title of action.)

This plaintiff in this, his complaint, respectfully shows to this court, that he is the owner and publisher of a certain calendar or almanac, known and distinguished as "Webster's Calendar, or the Albany Almanac," and that as such owner and proprietor he has published the same for a number of years last past, to wit: eight years; that he acquired the title to the same and the property therein in the year 1844, by purchase from the then proprietor of the said Almanac. That the said Almanac has been annually published and known by the said title of "Webster's Calendar or the Albany Almanac," since the year 1784, as this complainant has been informed and believes; that such publication has been made by this plaintiff, and those through whom he has received title to the same, as the owners and proprietors thereof since the original establishment of the same in 1784 aforesaid. That the enjoyment of said interest and property, so purchased as aforesaid by this plaintiff, is, has been, and if unmolested and not interferred with by said defendant and those combining with him would be the source of compensation and profit in the publication thereof.

And this plaintiff further shows, that, notwithstanding the long and quiet enjoyment of the said plaintiff in the publication of the said calendar or almanac with his well known trade mark or title, one E. H., the above named defendant, not regarding the rights, interest and property of the plaintiff herein, has knowingly, wilfully and fraudulently interfered with the plaintiff's rights herein, and printed, published, sold and exposed for sale, and advertised to sell a calendar or almanac, bearing the identical trade mark or title long used and still the property of this plaintiff. And

by continued wrong doings in selling and advertising to sell said calendar or almanac, greatly injuring the trade and business of this plaintiff in the premises. And also by selling the said calendar or almanac, bearing the title or trade mark of this plaintiff, which said calendars or almanacs were of an inferior quality both as to paper and printing, the said defendant injured the business reputation of this plaintiff, whereby the said plaintiff has sustained damage in the premises amounting to five hundred dollars.

And this complainant further shows, that he has repeatedly called upon the said defendant and requested him to desist from his wrong doings and injury to the plaintiff herein, and to pay this plaintiff what, upon a just and equitable accounting, would be due him. And this complainant hoped the said E. H. would have complied with this plaintiff's reasonable request; but now so it is, that the said defendant combining and confederating together, to and with divers other persons as yet to this plaintiff unknown, but whose names, when discovered, this plaintiff prays may be inserted herein as defendants, and they made parties hereto, with proper and apt words to charge them how to injure and oppress this plaintiff. The said confederates do now absolutely refuse to pay or to secure the payment for the damages done the said plaintiff, and do also refuse to cease selling or offering for sale or advertising to sell the said calendars or almanacs with the pirated title or trade mark of this plaintiff.

Whereupon the plaintiff demands judgment against the said defendant for five hundred dollars and interest thereon from the 30th day of January, 1852, together with the costs of this action; and further, this plaintiff prays the aid of this court, that the said E. H., his counsellors, agents and attorneys may be restrained by an injunction, issuing out of this court, from printing, publishing, selling or exposing for sale, or advertising to sell said calender or almanac, or any calendars or almanacs bearing the title or trade marks of this plaintiff.

J. G. Plaintiff's Att'y, Buffalo.

[No. 323.]

Complaint on a covenant of quiet enjoyment in a deed.

(Title of action.)

This plaintiff in his complaint, shows to the court, that heretofore, and on or about the twenty-first day of May, 1845, the said defendant, and Mary his wife, made their warrantee deed or indenture, in the words and figures following, (here set out deed,) which said deed or indenture, for a valuable consideration, to wit: the sum of one thousand dollars, the said defendant then and there delivered to this plaintiff.

And this plaintiff further says, that he the said plaintiff has not been permitted, nor has he been able from time to time, and at all times peaceably and quietly to have, hold, use, occupy, possess and enjoy the said premises in the said indenture mentioned, and thereby intended to be conveyed, nor has he been able to have, receive and take the rents, issues and profits thereof; but on the contrary, one E. M., who at the time of making the said indenture herein before set forth, and continually from thence, until and at the time of the eviction, ejection and expulsion hereinafter mentioned, had, and still has lawful right and title to the said premises with the appurtenances, did enter into the same, in and upon the possession of the said tenements, and ejected, expelled and removed the said plaintiff, against the will of the said plaintiff, by due process of law, from the possession and occupation of all and every part of the premises, (or if only a part set out, what part,) with the appurtenances, and kept and held out, and still keeps and holds out him the said plaintiff, so thereof expelled from his possession and occupation thereof, contrary to the form and effect of the said indenture, and of the said covenant of the said defendant, so by him made in that behalf as aforesaid, by reason of all which said premises, th said plaintiff has not only entirely lost, and been deprived of the said land and tenement in the said indenture particularly mentioned, and of divers large sums of money by him the said plaintiff laid out

and expended in and upon the said premises, in repairing, amending and improving the same, but has also been obliged to pay the costs and charges sustained by the said E. M., in prosecuting a certain action in the nature of ejectment for the recovery thereof, all of which amount to a large sum, to wit: two thousand dollars. Wherefore he demands, &c.

[No. 324.]

Complaint for the delivery of personal property.

(Title of action.)

The above named plaintiff complains of the defendant, and says, that the said defendant sometime in the month of September or October, 1850, wrongfully and unjustly took from the custody and possession of this plaintiff, five hundred barrels of flour, said flour being the property of this plaintiff, and he entitled to the sole possession thereof; and the said defendant wrongfully and unjustly retains the same in his possession, although the said plaintiff has demanded possession thereof, yet the said defendant has refused, and still refuses to deliver the same or any part thereof. The plaintiff thereupon demands judgment against the defendant for the sum of twenty-five hundred dollars, and interest thereon from the thirtieth day of October, one thousand eight hundred and fifty-one, together with costs of this action; or for such other or further relief, legal or equitable, as to the court may seem meet in the premises.

B. P., Plaintiff's Attorney, Albany.

[No. 325.]

Complaint for assault and battery.

(Title of action.)

This plaintiff in his complaint says, that this defendant at Schenectady, on the fifteenth day of July, 1851, with force and arms assaulted this plaintiff, and then and there, with force and violence seized and laid hold of the said plaintiff

by his nose, and greatly squeezed and pulled the same, and then and there, with a certain stick and with his fists, gave and struck the plaintiff a great many violent blows and strokes, on and about divers parts of his body; and also then and there, with great force and violence, shook and pulled about the said plaintiff, and cast and threw the said plaintiff down to and upon the ground, and then and there violently kicked the said plaintiff, and gave and struck him a great many other blows and strokes; and also then and there, with great force and violence, rent, tore and damaged the clothes and wearing apparel of the said plaintiff, to wit, one coat, waistcoat and pantaloons, of great value, to wit, of the value of twenty dollars; which clothes the said plaintiff then and there wore and was clothed with. By means of which said several premises, the said plaintiff was then and there greatly hurt, bruised and wounded, and became and was sick, sore and lame, and so remained and continued for the space of six weeks then next following, during all which time the plaintiff thereby suffered and underwent great pain, and was hindered and prevented from performing and transacting his necessary affairs and business by him during that time to be performed and transacted, and also thereby the said plaintiff was forced and obliged to, and necessarily did pay, lay out and expend a large sum of money, in and about endeavoring to be cured of the bruises, wounds, sickness, soreness, lameness and disorder aforesaid, occasioned as aforesaid. Wherefore he demands, &c.

[No. 326.]

Complaint for false imprisonment.

(Title of action.)

This plaintiff, in his complaint says, that the defendant, in the city of Utica, on the tenth day of April, 1851, with force and arms, assaulted the plaintiff, and then and there seized and laid hold of the said plaintiff, and with great

force and violence, pulled and dragged about the said plaintiff; and also then and there forced and compelled the said plaintiff to go from and out of a certain dwelling house situate and being in the city of Utica, into the public street, and then and there forced and compelled him to go in and along divers public streets, to a certain police office, situate and being in the said city, and then and there imprisoned the said plaintiff, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for the space of six weeks then next following, contrary to the laws and customs of this State, and against the will of said plaintiff, whereby the said plaintiff was not only greatly hurt, bruised and wounded, but was also, thereby then and there greatly exposed and injured in his credit and circumstances, and was then and there hindered and prevented from performing and transacting his necessary affairs and business, by him during that time to be performed and transacted, by means whereof the said plaintiff says that he is injured, and has sustained damage to the amount of five hundred dollars; and he demands, &c.

[No. 327.]

Complaint for trespass to real property.

(Title of action.)

This plaintiff in his complaint says, that the defendant on the 25th day of July, 1850, with force and arms broke and entered into divers closes of the said plaintiff, situate in the town of Nassau, county of Rensselaer, and there mowed and cut down the grass and grain of the said plaintiff, and then and there seized, took and carried away the hay and grain of the said plaintiff, to wit, five cart loads of hay and three cart loads of wheat, being the property of the said plaintiff, and took and converted the same to his own use, to the great damage of the plaintiff; and afterwards and on the third day of August, in the year aforesaid, the said defend-

ant broke into and entered certain other closes or lots of this plaintiff, being in the town aforesaid, and then and there cut down, prostrated and destroyed the trees and underwood of the said plaintiff, and cut, carried away and converted to his own use a large quantity of timber, being the property of the plaintiff; by means of which wrong and unjust doings of the said defendant this plaintiff has been injured and sustained loss and damage to the amount of three hundred dollars. Wherefore he demands, &c.

[No. 328.]

Complaint for trespass in taking goods.

(Title of action.)

This plaintiff complains of the defendant, that he the said defendant, on the tenth day of September, 1851, at Stephentown, in the county of Rensselaer, wrongfully broke into the plaintiff's barn and took from his possession one large wagon, two sets of harness, two bay horses, one buffalo robe and one whip, being the property of this plaintiff, and then and there took and carried away the same and converted them to his own use, to the damage of this plaintiff of four hundred dollars. Wherefore he demands, &c.

[No. 329.]

Complaint on undertaking on injunction.

(Title of action.)

This plaintiff in his complaint shows to the court, that on the fifteenth day of July, 1850, an injunction issued out of this court in an action commenced by C. D. against this plaintiff, to restrain, hinder and forbid this plaintiff from the foreclosure of a mortgage, which said mortgage this plaintiff had commenced to foreclose by advertisement under the statute, and that upon the issuing of the said injunction in the said action, an undertaking was given by the said C. D.,

in which said undertaking the said defendants L. B. and F. H., in their proper persons became pledges and security in the words and figures following: (set out the undertaking.) And this plaintiff further shows that the said action so commenced against this plaintiff was prosecuted and carried on and finally decided by the court, that the said C. D. was not entitled to the said injunction, and that the damages sustained by this plaintiff by reason of the said injunction, amounted to the sum of three hundred dollars and interest thereon from December 10, 1851, which the court then and there awarded to this plaintiff. And this plaintiff further says, that the said C. D. has not paid the said sum of three hundred dollars, or any part thereof, and that the said judgment by this plaintiff so recovered as aforesaid, is still in full force, strength and effect, wholly unsatisfied, whereby an action has accrued to this plaintiff to have and receive the said sum of money of these defendants, according to the tenor and effect of the said undertaking. Wherefore he demands judgment, &c.

[No. 330.]

Complaint against sheriff for false return.

(Title of action.)

The above named plaintiff complains of the defendant, and says that on or about the fourth day of September, 1850, he obtained a judgment against one W. M., of the city and county of New York, amounting to four hundred dollars, as appears by the record of said judgment filed in the office of the clerk of the city and county of Albany, and a transcript thereof duly filed and judgment docketed in the office of the clerk of the city and county of New York, and that an execution thereon was issued to and received by this defendant, sheriff as aforesaid, on the sixth day of September aforesaid, commanding the said sheriff to levy the said sum of four hundred dollars and interest thereon from September 4, 1850, and* the said defendant, by virtue

of the said execution, took in execution goods and chattels of the said W. M., in value more than sufficient to satisfy said execution and his fees and charges thereon, and yet the said defendant afterward and on or about the fifth day of November, 1850, returned the said writ, and for return thereto the said defendant, W. M., had no goods and chattels in his, the defendant's bailiwick, out of which he could caused to be levied the amount of the said judgment, and that by reason of the premises the plaintiff has sustained damage to the amount of four hundred dollars and interest thereon from the fourth day of September, 1850. Wherefore he demands, &c.

[No. 331.]

Complaint against sheriff for not making return.

(As in the last form to the * then) and now at this time the said defendant, although sufficient time has elapsed therefor, has not returned the said execution as commanded and directed, and that by reason of such neglect this plaintiff has sustained damage to the amount of four hundred dollars and interest thereon from September 4, 1850, for which, together with costs of this action, this plaintiff demands judgment.

B. P., Plaintiff's Att'y,
Albany.

[No. 332.]

Complaint against sheriff for an escape.

(As in last form but one to the * then) which said execution was returned wholly unsatisfied, and afterwards and on or about the tenth day of November, 1850, another execution was issued and received by this defendant on the said tenth day of November, commanding him, the said

sheriff, forthwith to arrest the said W. M. and commit him to the jail of the said county of New York until he should pay the said judgment, by virtue of which said writ the said defendant so being sheriff as aforesaid, took and arrested the said W. M. by his body, and then and there, by virtue of the said writ, had and detained him in his custody in execution for the said sum of four hundred dollars, besides sheriff poundage and fees, and kept and detained him in custody from thence till the said defendant, without the leave or license, and against the will of this plaintiff, suffered and permitted the said W. M. to escape and go at large, and the said W. M. did escape and go at large wheresoever he would, out of the custody of this defendant, being sheriff as aforesaid; and the said sum of four hundred dollars and interest thereon being then and still wholly unpaid and unsatisfied, whereby an action has accrued to this plaintiff to demand and have of and from this defendant the said sum of four hundred dollars and interest thereon from September 4, 1850, together with costs of this action; and he prays judgment therefor.

B. P., Plaintiff's Att'y.

[No. 333.]

Complaint for breach of warranty of horse.

(Title of action.)

This plaintiff complains of the defendant, and says that on the tenth day of April, 1851, at the special instance and request of the said defendant, he bargained with the said defendant and bought of the said defendant a certain horse, at and for the sum of one hundred dollars, and the said defendant, by then and there representing the said horse to be in every way sound and gentle and quiet in harness, then and there sold the said horse to the said plaintiff for the said sum of one hundred dollars, which this plaintiff then and there paid to the said defendant: whereas, in truth and

in fact, the said horse was at the time of the said warranty and sale thereof unsound, and had the heaves and was unsteady, restive and ungovernable in harness, and has so remained and continued from thence hitherto. And this plaintiff further says, that relying upon the said warranty of the said defendant, he afterwards attempted to use the said horse in harness, and the said horse being unsteady, restive and ungovernable in harness, without the fault of this plaintiff ran away, greatly injuring and breaking the said plaintiff's wagon, and also greatly injuring and bruising the said plaintiff, whereby the said plaintiff became sick, sore and lame, and was hindered and prevented from doing his work, which it was necessary for him to do, and has been put to great expense in diverse ways on account of his relying upon the said warranty of the said horse, and has sustained damage thereby to a large amount, to wit, three hundred dollars. Wherefore he demands judgment, &c.

[No. 334.]

Complaint for work, labor and materials.

(Title of action.)

This plaintiff in his complaint says, that this defendant is indebted to this plaintiff for the work, labor and services, care and diligence of this plaintiff and his servants, for the defendant at sundry times, and also for materials and other necessary things supplied by this plaintiff to the defendant, at his request, in building a certain dwelling house for the said defendant, at the village of West Troy, in the county of Albany; that the amount of such work, labor and services, care and diligence of this plaintiff, and his servant, and also for the materials and other necessary things, furnished at the request of the defendant, in the sum of five hundred dollars.

And this plaintiff admits that he has received from the said defendant the sum of two hundred dollars, in part payment of the same; but the balance, to wit, of three hundred dollars, and interest thereon from the third day of December, 1851, is still due and unpaid to this plaintiff. Wherefore, he demands, &c.

[No. 335.]

Complaint to dissolve marriage because of non age.

(Title of action.)

This plaintiff, son of A. B., of the city of Troy, an infant under the age of twenty-one years, to wit, of the age of about fifteen years, by C. B., his guardian or next friend, in this his complaint, says: That on or about the fifteenth day of December, 1850, this plaintiff intermarried with one E. F., (now E. B.,) at the city of Schenectady, and that at the time of the said marriage this plaintiff and defendant were, and now are, inhabitants of this State.

And this plaintiff further shows, that at the time of his said marriage, he was an infant under the age of legal consent, to wit, of the age of about thirteen years, and was therefore incapable of contracting marriage, and the E. F. was of the age of about eleven years.

And this plaintiff further shows, that for a short time after the said marriage, he cohabited with the said E. F., but they have not cohabited as husband and wife for any time, or in any manner, since this plaintiff obtained the age of consent, that is to say, the age of fourteen, which was on the twentieth day of February, 1852.

And this plaintiff further shows, that he is desirous of having the said marriage, between him and the said E. F., dissolved and declared null and void by a decree of this court. Wherefore he demands that the said marriage between him and the said E. F., may be dissolved and declared null and void by a decree of this court, according to the sta-

tute in such case made and provided ; and that this plaintiff may have such further or other relief in the premises as shall be equitable, and the circumstances of the case may require.

M. R., Plaintiff's Att'y, Troy.

[No. 336.]

Complaint to dissolve marriage because of lunacy.

(Title of action.)

This plaintiff in his complaint, shows to the court, that on or about the tenth day of March, 1849, this plaintiff intermarried with one L. M., (now L. B.,) at the city of Utica, and that at the time of the said marriage, this plaintiff and the said L. B. were, and ever since have been, and now are inhabitants of this State.*

And this plaintiff further shows, that about two years previous to the said marriage, and on or about the twenty-eighth day of February, 1847, this plaintiff had, by an inquisition of a jury, taken under and by virtue of a commission in the nature of a writ, *de lunatico inquirendo*, issued out of the court of chancery, upon the partition of the plaintiff's brother for that purpose, been found to be a lunatic and of unsound mind, not having lucid intervals, and that he was incapable of the government of himself, or of the management of his lands, tenements, goods or chattels, and that he had been in that state for about one year.

And this plaintiff further shows, that upon the return of said inquisition to the said court of chancery, an order was entered on the fifth day of May, 1847, confirming the finding of the jury in the said inquisition, and appointing C. B., the brother of this plaintiff, the committee of his person and estate.

And this plaintiff further shows, that from the time of taking the inquisition aforesaid, until the said marriage and until long afterwards, he was a lunatic, and of unsound mind,

and incapable of contracting matrimony. And this plaintiff further says, that at the time the said marriage took place, it was well known to the said L. that this plaintiff was a lunatic, under the care of his said committee, and that he was incompetent to consent to such marriage. That the said L. had been a near neighbor of this plaintiff for several years, and had notice not only of his mental incapacity, but of all the proceedings under the commission of lunacy above mentioned.

And this plaintiff further shows, that the said marriage took place and was entered into without the knowledge or consent of the committee of this plaintiff.

And this plaintiff further shows, that he is now perfectly recovered of his lunacy aforesaid, and restored to his right mind, memory and understanding, and has been so for about one year last past; and that by an order of this court, made upon the application of this plaintiff, on the twentieth day of August last, the commission of lunacy issued against him as aforesaid, and the inquisition taken thereon were superseded and determined, and this plaintiff was discharged from the care, custody and government of his said committee.

And this plaintiff further shows, that since his restoration to a sound state of mind as aforesaid, he has not voluntarily, nor in any manner cohabited with the said L. That this plaintiff is advised that the marriage had and solemnized between him and the said L., as aforesaid, is, under the circumstances attending the same, invalid and null; and therefore he demands that the same should be dissolved and adjudged, and declared null and void, by a decree of this court.

R. M., Att'y for Plaintiff.

[No. 337.]

Complaint to dissolve marriage for physical incapacity.

(As in the last form to the *, then) And this plaintiff further shows, that immediately after the said marriage took

place, this plaintiff discovered that the said L., at the time of her intermarriage with this plaintiff as aforesaid, was physically incapable of entering into the marriage state; that the uterus and vagina of the said L., were at the time of such intermarriage, and for a long time previous thereto, had been in a diseased, and in a schirrous, cartaliginous and ulcerated state; and unnaturally thickened and indurated, so that the said marriage could not be consummated by the sexual intercourse of the parties.

And this plaintiff further shows, that for about six years next preceding the said marriage, the said L. had been a widow, during all which period of time, as this plaintiff has been informed and believes, the said diseased state of the said L. existed, and was increasing and progressing; and that the physical incapacity of the said L., arising from the diseased condition of the parts aforesaid, was well known to her at the time of her said intermarriage with this plaintiff, and for a long time previous thereto.

And this plaintiff further shows, that as he has been informed and believes, the said physical incapacity of the said L. still exists and is incurable, and so charges the fact to be. And this plaintiff further shows, that he is desirous of having, and demands that the said marriage, between him and the said L., be dissolved, and declared null and void by a judgment of this court, according to the statute in such case made and provided.

A. S., Plaintiff's Att'y.

[No. 338.]

Complaint to dissolve marriage because of adultery.

(Title of action.)

This plaintiff says that on or about the tenth day of April, 1842, he intermarried with L. E., (now L. B.,) at the city of Buffalo, and he continued to live with the said L. as his wife, until about the first day of January, 1851, and that from the time of the said marriage they have been, and at

the time and times of the commission of the several acts of adultery hereinafter set forth, were and now are inhabitants of this State.

And this plaintiff further shows, that during the time he lived and cohabited with the said L. as his wife, she had three children, to wit: A. aged about eight years, B. aged about six, and C. aged about 4.

And this plaintiff further shows, that he is informed and believes that the said L., disregarding the solemnity of the marriage vow, has since the marriage aforesaid, committed adultery at divers times and places; and especially that the said L., on the twenty-seventh day of December, 1850, at the city of Rochester, did commit adultery and have carnal connexion with one T. P.; and that the said L. did at various other times during the years 1850 and 1851 commit adultery and have carnal connexion with the said T. P., at the place last aforesaid and at some other place or places.

And this plaintiff further shows, that he was wholly and entirely ignorant of the commission of the aforesaid acts of adultery by the said L., or any or either of them, until about the first day of January, 1851; that five years have not elapsed since he discovered the fact that such adultery had been committed by her; that he has not voluntarily cohabited with her since the discovery thereof, and that such adultery was committed by her without his consent, connivance, privity or procurement.

And this plaintiff further shows, that as he is informed and believes, that the said L. is now and for some time past has been living with one W. X. in open and notorious adultery, at Schenectady, and that five years have not elapsed since the commencement of such adulterous intercourse was discovered by this plaintiff; and that such adulterous intercouse between the said L. and the said W. X. was begun and is continued without his consent, connivance, privity or procurement.

In consideration of the premises, this plaintiff demands the decree or judgment of this court, that the marriage between this plaintiff and the said L. may be dissolved, and

a divorce decreed according to the statute in such case made and provided; and that this plaintiff may have such other and further relief in the premises as shall be equitable.

B. C., Plaintiff's Att'y, Utica.

[No. 339.]

Complaint to obtain a limited divorce or separation.

(Title of action.)

This plaintiff, the wife of Y. Z., a merchant of the city of Buffalo, by her next friend, A. B., says, that on or about the sixteenth day of July, 1844, this plaintiff was duly married to the said Y. Z., and continued to live with him as his wife until the tenth day of January last past. That at the time of the said marriage this plaintiff and defendant were, and still are inhabitants of this State.

And this plaintiff further shows that during the time she lived and cohabited with the said Y. Z., as aforesaid, she had two children by him, to wit, Ellen, about three years old, and Jane, about one year old. And that during all the time she conducted herself with propriety, managed the household affairs of her said husband with prudence and economy, and at all times treated her said husband with kindness and forbearance. But that the said Y. Z., disregarding the solemnity of his marriage vow, and his obligation to treat his said wife, this plaintiff, with kindness and attention, within about two years after their said marriage, commenced a course of harsh, unkind, and tyrannical conduct towards her, which continued with very slight intermissions, until she finally separated from him in the month of January last.

And this plaintiff further shows, that on divers occasions, while this plaintiff lived with the said Y. Z. as aforesaid, he was guilty of cruel and inhuman treatment, and of such conduct towards her as rendered it unsafe and improper for her to cohabit with him. That on or about the tenth day of December, 1851, (here specify the several particular acts of cruelty.)

And this plaintiff further shows, that the said Y. Z. was, and is a man of violent passions, of ungovernable temper, and of intemperate habits; and that on many occasions during the time this plaintiff lived with the said defendant, he addressed to her the most opprobrious epithets, and threats of personal violence, and that he repeatedly threatened to take her life. And that in consequence of the cruel and inhuman treatment above mentioned, together with the threats aforesaid, and such brutal and outrageous conduct towards her as rendered it unsafe for her to live with him, or to remain within the reach of his violence, she was on or about the tenth day of January, 1852, obliged to leave the house of the said Y. Z. and go to her friends, since which time she has not dared to return to his said house, or to live with him.

And this plaintiff further shows, that since she left the house of the said Y. Z., he has refused to provide for her support and maintenance; and that she has been, and now is dependent entirely upon her own labor and the charity of her friends for her support. That she is now very destitute and in great want, and that she is indebted to a considerable amount for board and necessary clothing.

And this plaintiff further shows, that within about a year after their marriage, the said Y. Z. received about five thousand dollars as the distributive share of this plaintiff in her father's estate; the whole of which he has applied and converted to his own use. And that the said Y. Z., as this plaintiff is informed and believes, is seized and possessed of real estate to the amount of twenty thousand dollars.

In consideration of these premises, this plaintiff seeks the aid of this court, and demands that a separation from bed and board forever may be adjudged and decreed between this plaintiff and the said Y. Z., and that he may be compelled by a decree of this court to make a proper and suitable provision for the support and maintenance of this plaintiff and her said children; and that this plaintiff may have the care, custody and education of the children of the said marriage, according to the statute in such case made

and provided, and that this plaintiff may have such other or further relief in the premises as shall be equitable and the circumstances of this case may require.

M. P., Plaintiff's Att'y, Buffalo.

[No. 340.]

Complaint to foreclose a mortgage.

(Title of action.)

The above named plaintiff complains, that the defendant, J. V., on or about the twenty-first day of October, 1849, executed under his hand and seal, and delivered to this plaintiff a bond bearing date on that day, in the penal sum of eight hundred dollars, with a condition thereunder written, in substance that if the obligor in the said bond, his heirs, executors or administrators, should pay or cause to be paid to said plaintiff, the obligee in the said bond named, his heirs, executors, administrators or assigns, the sum of four hundred dollars, on or before the twenty-first day of October, 1851, with lawful interest thereon annually, then the said bond to be void, otherwise to be and remain in full force, (as by the said bond, ready to be produced as this court shall direct, will more fully appear.) And the said J. V., and Mary his wife, to secure the payment of the principal and interest mentioned in the condition of the said bond, did at the same time execute under their hands and seals, and deliver to said plaintiff a mortgage bearing the same date with the said bond, and conditioned for the payment of the said sum of four hundred dollars, and the lawful interest thereof, at the time and in the manner hereinbefore mentioned, according to the condition of the said bond; by which said mortgage, the said J. V., and M. his wife, mortgaged, bargained and sold to the plaintiff, the following described premises, with the appurtenances thereto, that is to say, (here set forth the mortgaged premises,) which mortgage was duly acknowledged and certified so as to entitle it to be recorded, and the same was afterwards duly recorded

as a mortgage in the office of the clerk of the county of Greene, on the twenty-second day of October, 1849, (as by the said mortgage, and the certificate of acknowledgment and of the recording aforesaid, endorsed thereon, and now ready to be produced as this court shall direct, will more fully appear.)

And this plaintiff further says, that as he is informed, E. G., F. H., and J. K., have or claim to have, some interest in or claim upon said mortgaged premises which said interest or claim is subsequent to and subject to the plaintiff's. And no personal claim is made against any of said defendants, except the defendant and mortgagor, the said J. V.

And plaintiff further says, that the sum of four hundred dollars of principal, the amount secured by the said bond and mortgage, together with the interest on that sum from the twenty-first day of October, one thousand eight hundred and fifty, still remains due and unpaid to the plaintiff, and that no other proceedings at law have been had to recover the debt secured by the said bond and mortgage, or any part thereof.

The plaintiff therefore prays the aid of this court in the premises, and that the usual judgment or decree may be made for the sale of the mortgaged premises aforesaid, and for the amount due the plaintiff, for principal and interest on the said bond and mortgage, together with his costs in this action, and that the said defendants, and all persons claiming under them subsequent to the commencement of this action, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all equity of redemption in the said premises; and that the defendant, J. V. may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto, and that the plaintiff may have such further or other relief as the nature of the case may require, and as to this court may seem proper and agreeable to equity.

M. R., Plaintiff's Att'y,
Catskill.

[No. 341.]

Complaint in ejectment.

(Title of action.)

This plaintiff in his complaint, says, that one A. B., on or about the tenth day of June, 1845, duly made and executed his last will and testament in writing, and thereby gave and devised to this plaintiff the premises hereinafter described, to hold to this plaintiff and his heirs forever, and that the said A. B. departed this life on the twentieth day of July, 1851, without having revoked or altered his said will; and the same has been duly proved as a will of real estate, as appears by the probate and record thereof, in the office of the surrogate of the county of Greene. And this plaintiff further says that this defendant is now wrongfully in possession of the said premises, and wrongfully claims a right thereto, and although often requested, has refused and still refuses to deliver up the said premises to this plaintiff. The premises devised in said will, and wrongfully retained by the said defendant, are described as follows, to wit: (here insert description of premises.)

And this plaintiff further says, that by reason of such continued wrong doing on the part of the said defendant, he has sustained damage to the amount of four hundred dollars. Wherefore he demands judgment against the said defendant, for the said four hundred dollars, together with the costs of this action, and also that the said defendant do forthwith deliver up to the plaintiff the possession of the said premises, and every part thereof.

C. P., Plaintiff's Att'y, Hudson.

[No. 342.]

Complaint in ejectment for dower.

(Title of action.)

This plaintiff in her complaint, says, that on the fourth day of November, 1810, this plaintiff was lawfully married to and with one B. C., now deceased; that the said B. C.,

during such marriage, and in his lifetime, owned and was seized and possessed in fee of land and premises hereinafter described; that the said B. C. died on or about the sixth day of July, 1848, leaving the said plaintiff, his widow, him surviving; and that said plaintiff did not at any time during the lifetime of her said husband join with him in any conveyance of the said lands and premises, or any part thereof; that in consequence thereof the said plaintiff became, and was, and is entitled to the possession, occupancy and rents, issues and profits of the undivided third part, during her natural life of said lands and premises, bounded and described as follows: (insert description of premises,) as her reasonable and lawful dower as the widow of the said B. C., deceased, late the husband of this plaintiff. And the said plaintiff further says, that the said defendants are now wrongfully in the occupation and possession of the said undivided one-third part of said lands and premises, and claim a right thereto, and continue unjustly to withhold from the plaintiff the possession and profits thereof. Whereupon the plaintiff demands the judgment of this court, that the said defendant do forthwith deliver up the undivided one-third part of the above described lands and premises, with the appurtenances, to the plaintiff, as her reasonable and lawful dower as widow of the said B. C., deceased, as aforesaid, and pay to the plaintiff the costs of this action.

M. R., Plaintiff's Att'y, Catskill.

[No. 343.]

Demurrer to a complaint for defect of party plaintiff.

(Title of action.)

The defendant demurs to the plaintiff's complaint in this action, for a defect of the parties herein *.

Because, it appears upon the face of the complaint that the said plaintiff is a married woman, and her husband is still living, (and this action does not concern the separate property of the plaintiff.)

M. R., Defendant's Att'y, Albany.

[No. 344.]

Another form.

(As in the last form to the *, then) Because the said complaint shows that this action is brought to recover a debt claimed to be due this plaintiff and one A. B. jointly, and the said A. B. is not joined as a party to this action.

M. R., Defendant's Atty.

[No. 345.]

Demurrer to complaint for defect of party defendant.

(Title of action.)

This defendant demurs to the plaintiff's complaint in this action on account of defect of party defendant appearing upon the face of the said complaint.

Because it appears from the said complaint that this action is brought to recover a demand claimed to be due from this defendant and one A. B. jointly, who has not been joined as a party in this action.

P. B., Plaintiff's Att'y.

[No. 346.]

Demurrer to complaint for misjoinder of action.

(Title of action.)

This defendant demurs to the plaintiff's complaint herein, for that several causes of action have been improperly united in this action.

Because in folios one to four he claims a demand to be due the said plaintiff from this defendant, arising upon a promissory note and an account for goods sold; and in folios five to ten he claims to recover real property and damages for withholding thereof; and in folio eleven he claims to recover for injuries to the person.

M. B., Defendant's Att'y.

[No. 347.]

Demurrer that complaint does not state sufficient facts to constitute a cause of action.

(Title of action.)

This defendant demurs to the plaintiff's complaint herein, because it does not state facts sufficient to constitute a cause of action.

Said plaintiff alleges that this defendant received from the plaintiff a large quantity of hides to be tanned and manufactured into boots and shoes, and the said boots and shoes to be returned to the said plaintiff, but nowhere alleges that sufficient time has elapsed for the said tanning and manufacture, or that this defendant is in default.

or:

It appears from said complaint that this action is brought to recover the amount claimed to be due upon an inland bill of exchange, drawn by this defendant upon one W. B. and accepted by the said W. B., but nowhere alleges a transfer to this plaintiff, or that said bill is due, or has been presented for payment, or that this defendant had notice of non-payment.

W. C., Defendant's Att'y.

[No. 348.]

Demurrer to answer for insufficiency.

(Title of action.)

This plaintiff demurs to the defendant's answer in this action, for the insufficiency thereof.

Because, the said defendant in his answer has not specifically and positively admitted or denied the several allegations in the said complaint; and in his answer, folios five and six, he has denied several charges in the complaint conjunctively, whereas such charges must be denied disjunctively; and the said answer is in several other respects imperfect, insufficient and evasive.

M. B., Plaintiff's Att'y.

[No. 349.]

Commencements of answers.

SUPREME COURT.

M. B. *ads.* G. H. } or { E. T., impleaded with others, *ads.* G. H.

By an infant.—This defendant, an infant, under the age of twenty-one years, by C. D., his guardian, in answer to the plaintiff's complaint, herein says, &c.

By a single defendant.—J. C., one of the above named defendants answering for himself, says, &c.

By a defendant sued by a wrong name.—This defendant, H. E., in the summons and complaint in this action, called G. E., answering the plaintiff's complaint herein, says, &c.

By husband and wife jointly.—G. H., one of the above named defendants, and C. H., his wife, for answer to the plaintiff's complaint in this action, jointly say, &c.

By a lunatic or idiot.—The defendant, C. D., a lunatic, (or idiot, or habitual drunkard,) by M. B., his committee and guardian, *ad litem*, in this his answer to the plaintiff's complaint, says that, &c.

[No. 350.]

Answer—coverture of plaintiff.

(Commence as before.) That the said plaintiff before, and at the time of the commencement of this action was, and still is married to one M. B., then, and yet her husband, who is still living in the city of Rochester.

[No. 351.]

Answer—coverture of defendant.

(Commence as before.) That at the time of the service of the summons (and complaint) in this action on this defendant, she was, and still is the wife of one C. B., who is still living in the city of Buffalo, and that the cause of action set forth in the said plaintiff's complaint, does not concern the separate property or liability of this defendant.

[No. 352.]

Answer—infancy of plaintiff.

(Commence as before.) That the said plaintiff is an infant, under the age of twenty-one years, to wit: of the age of eighteen years, and has commenced this action in his own person, and not by his next friend or guardian, *ad litem.*

[No. 353.]

Answer—defect of party plaintiff.

(Commence as before.) That the said several promises and undertakings in the said complaint mentioned and set forth, if any such were made, were, and each of them was made by the said defendant jointly, (or the said plaintiff jointly,) with one A. B., who is still living at the city of New York, and still is a real party in interest in the matters in controversy in this action.

[No. 354.]

Answer of statute of limitations.

(Commence as before.) That the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he, the said defendant, did not at any time within six years, next preceding the commencement of this action, undertake or promise to pay the said plaintiff in the manner and form set forth by the said plaintiff in his complaint or in any other manner or form whatever.

[No. 355.]

Answer of duress.

(Commence as before.) This defendant ought not to be charged with the demand referred to in the complaint in this action by virtue of the said writing obligatory, because

he, the said defendant, at the time of making the said writing aforesaid, was unlawfully imprisoned by the said plaintiff, (and others in collusion with him,) and then and there detained in prison, until by the force and duress of imprisonment of him, the said defendant, he made the said writing, and delivered the same to the said plaintiff as his writing obligatory.

[No. 356.]

Answer of release.

(Commence as before.) That after the making of the said several promises and undertakings in the said complaint mentioned, and before the commencement of this action, to wit: on the third day of July, 1851, the said plaintiff made his certain writing of release in the words and figures following: (set forth copy of release.)

[No. 357.]

Answer of payment.

(Commence as before.) That the said plaintiff ought not to have or maintain this action against him, because the said defendant did, on the day mentioned in the said writing obligatory mentioned, pay to the said plaintiff the said sum of five hundred dollars in the said condition mentioned, together with all interest then due thereon, according to the form and effect of the said condition.

[No. 358.]

Answer of accord and satisfaction.

Commence as before.) That he, the said defendant, before the commencement of this action, to wit: on the third day of April, 1852, at Albany aforesaid, paid to the said plain-

tiff the sum of one thousand dollars, in full satisfaction and discharge of the sum in the said breach of covenant mentioned, and of all the damages by the said plaintiff sustained by reason of the non-payment thereof; which said sum of one thousand dollars, the said plaintiff then and there accepted and received of and from this defendant, in full satisfaction and discharge of the said sum in the said breach of covenant mentioned, and of the damages of the said plaintiff by him sustained by reason of the said breach of covenant.

[No. 359.]

Answer of discharge under insolvent act.

(Commence as before.) That the said defendant being an inhabitant of the city of Troy, and being also an insolvent debtor, within the true intent and meaning of the act, entitled "Of voluntary assignments made pursuant to the application of an insolvent and his creditors," did in conjunction with so many of his creditors residing within the United States as had debts in good faith owing to them by the said defendant, amounting to at least two-thirds of all the debts owing by him to creditors residing within the said United States, presented a petition to J. O., Esq., then recorder of the said city of Troy, in accordance with the said act, and such proceedings were thereupon had agreeably to the said act; that afterwards, and on the tenth day of March, 1851, the said recorder did discharge the said defendant by a writing under his hand and seal, in the words and figures following, to wit: (here insert discharge,) and this defendant further says, that the said several promises and undertakings in the complaint set forth, and every of them, were made after the twelfth day of April, 1813, and that at the time of making of the said several promises and undertakings, and every of them, the said plaintiff and the said defendant were persons respectively resident within this State; and that the causes of action in the said complaint set forth,

arose and existed before the presenting of the petition as aforesaid to the said recorder in manner aforesaid, and before the giving of the discharge as aforesaid.

[No. 360.]

Answer of usury.

(Commence as before.) That before the making of the promises and undertakings in the said complaint mentioned, it was corruptly and against the form of the statute in that case made and provided, agreed by and between the said plaintiff and the said defendant, that the said plaintiff should lend and advance to the said defendant, the sum of four hundred dollars, and that the said plaintiff should forbear and give day of payment thereof to the said defendant for twenty days, and that the said defendant, for the loan of the said four hundred dollars, and for giving day of payment as aforesaid should give and pay the said plaintiff the sum of fifty dollars, being more than lawful interest for the same, and that in pursuance of the said usurious and corrupt agreements, the said plaintiff did then and there lend and advance to the said defendant the said sum of four hundred dollars, which said sum of fifty dollars was paid by the said defendant to the said plaintiff for the forbearance in giving day of payment.

[No. 361.]

Answer statute of frauds on a guaranty.

(Commence as before.) That the several supposed promises and undertakings in the said complaint mentioned were special promises, and each of them was a special promise for the debt of another person, to wit, J. C., and that no agreement in respect of or relating to the supposed causes of action in the said complaint mentioned, or either of them,

nor any memorandum or note thereof, wherein the considerations for the said special promises, or either of them, was or were stated or shown, was or is in writing, or was or is signed by the said defendant, or by any other person by him thereunto lawfully authorized, according to the form of the statute in such case made and provided.

[No. 362.]

Answer of arbitrament and award.

(Commence as before.) That after the making of the said several promises in the said complaint mentioned, the said plaintiff and the said defendant submitted themselves by two mutual bonds of arbitration and engaged in all things well and truly to keep, obey, abide and perform the award, arbitrament and final determination of A. B. and C. D., arbitrators indifferently elected and named as well on the part and behalf of the plaintiff as of the defendant, to arbitrate, award and determine of and concerning all and all manner of action and actions, and cause and causes of actions, and of all controversies and demands whatsoever, at any time theretofore had, made, committed or depending by and between the said parties or either of them, so as the said award should be made by the said arbitrators, under their hands, and ready to be delivered to the parties in difference, or such of them as should desire the same, on or before the twentieth day of May then next. And this defendant further says, that the said arbitrators, before the expiration of the time limited for making their award, took upon themselves the burden of the said arbitration, and having duly made and considered the subject matters in dispute between the said plaintiff and the said defendant, they, the said arbitrators, did make their award in writing under their hands, of and concerning the premises, and of and concerning the said promises and undertakings in the said complaint mentioned, and ready to be delivered to the said parties in difference.

[No. 363.]

Answer of judgment recovered.

(Commence as before.) That the said plaintiff heretofore and on or about the sixteenth day of March, 1851, in this court, recovered a judgment against this defendant for the sum of five hundred dollars, for the same causes of action as in this complaint mentioned and contained, as will appear by the judgment roll of the said action filed in the office of the clerk of the city and county of Albany, on the sixteenth day aforesaid, which said judgment still remains in full force and effect.

[No. 364.]

Answer claiming set off.

(Commence as before.) That at the time of the commencement of this action, the plaintiff was and still is indebted to this defendant in the sum of two hundred dollars, for the work, labor, care and diligence of this defendant and his servants and workmen for the said plaintiff, and at his request, which said sum of two hundred dollars the defendant hereby claims should be set off and allowed to the defendant against the said plaintiff, and demands judgment in his favor for the balance thereof, to wit: the sum of fifty-five dollars, together with the costs of this action.

[No. 365.]

Answer alleging non-compliance with conditions of the policy.

(Commence as before.) That the plaintiff did not before the commencement of this action give due notice or any notice of the loss of the said goods by fire, for which he seeks recovery in this action; nor did the said plaintiff, previous to the commencement of this action, furnish to the

said company any statement of the loss of the said goods, as by the said policy is required to be done, and in several other particulars the said plaintiff utterly neglected and refused to comply with the terms and conditions in the said policy set forth and expressed, and the said plaintiff at divers times received into his said store a large quantity of goods known and described as extra hazardous, well knowing that such reception was a violation of the conditions in the said policy contained; and at the time of the said fire, the said plaintiff had in his store a large quantity of such extra hazardous goods, by means whereof the conditions of the said policy were violated, disregarded and broken, and these defendants entirely discharged from their liability on the said policy written.

[No. 366.]

Answer that plaintiff committed first assault.

(Commence as before.) That said plaintiff ought not to have or maintain his action against him, because the said plaintiff just before the time in the said plaintiff's complaint mentioned, with force and arms made an assault upon * him the said defendant, and would then and there have beaten, bruised and ill-treated the said defendant, if he had not immediately defended himself against the said plaintiff; wherefore he, the said defendant did defend himself against the said plaintiff, as he lawfully might for the cause aforesaid; and in so doing did necessarily and unavoidably a little beat, bruise, wound and ill-treat the said plaintiff, and rend, tear, damage and spoil the said wearing apparel in the said complaint mentioned, doing no unnecessary damage to the said plaintiff on the occasion aforesaid; and if any hurt or damage then and there happened to the said plaintiff or to his said wearing apparel, the same was occasioned by the said assault so made by the said plaintiff on him the said defendant, and the necessary and lawful defence of him the

said defendant, against the said plaintiff, which are the same supposed trespasses complained of by the said plaintiff against this defendant.

[No. 367.]

Answer—defendant was preserving the peace.

(Commence as in the last to the *, then) one M. B., and was then and there at the same time beating and ill treating the said M. B., in breach of the peace of the people of the State of New York; wherefore the said defendant, at the said time, to preserve the peace of the said people of the State of New York, and to part the said plaintiff from, and to prevent him from further beating and ill treating the said M. B., gently laid his hands upon the said plaintiff, as he lawfully might, for the cause aforesaid, which are the same assaulting, beating and ill treating the said plaintiff has set forth in his complaint in this action.

[No. 368.]

Answer justifying as to charge of perjury.

(Commence as before.) That before the speaking and publishing the said words of and concerning the said plaintiff, as in the said complaint charged, to wit: at a term of the circuit court, held at the city of Troy, in the month of May, 1851, then and there holden before one of the judges of this court, according to the form of the statute in such case made and provided, a certain issue before then joined in an action brought and prosecuted in this court, by and at the suit of one A. B., as plaintiff, against C. D., as defendant, for the supposed breach of certain promises and undertakings, came on to be tried in due form of law, and was then and there tried by a jury of the country in that behalf, duly taken and sworn between the parties aforesaid; and upon such trial of

the said issue, this plaintiff appeared as a witness for and on behalf of the said A. B., the plaintiff in the said action, and this plaintiff was then and there in open court, holden as aforesaid, before the said judge thereof, duly sworn, and took his corporeal oath upon the Holy Gospel of God, to speak the truth, the whole truth and nothing but the truth, touching and concerning the matters in question in the said issue; the said court then and there having sufficient power and authority to administer the said oath to this plaintiff in that behalf; and upon the said trial of the said issue, it then and there became, and was material to ascertain the truth of the matters hereafter stated to have been sworn by this plaintiff.

And this defendant further says, that this plaintiff being so sworn as aforesaid, upon his oath aforesaid, falsely, wickedly, maliciously and corruptly, and by his own act and consent, did depose, swear and give evidence amongst other things, at and upon the said trial, that (here set forth that part of the plaintiff's evidence in which he committed perjury.) Whereas in truth and in fact, (here negative the plaintiff's evidence as in an indictment for perjury.) And this plaintiff did thereby in the said court so holden as aforesaid, upon his said oath upon the trial of the said issue, falsely, wickedly, wilfully and corruptly commit wilful and corrupt perjury. Wherefore this defendant, at the several times spoke and published of and concerning the said plaintiff, the said several words in the said complaint mentioned to have been spoken and published by the said defendant, of and concerning this plaintiff, as it was lawful for him to do for the cause aforesaid.

[No. 369.]

Answer—specific denial.

(Title of action.)

This defendant in answer to the plaintiff's complaint herein, denies that on the twenty-first day of March, 1851, or at any other time, he was, or is indebted to the said plain-

tiff in the sum of one thousand dollars, or any other sum (as balance) for work, labor and services, care and diligence done and performed, and supplied by the plaintiff and his servants for the defendant, and for brick, mortar, lath and plaster, cut free stone, blue stone, iron work, and other necessary materials and things bestowed, furnished and supplied by the plaintiff for the defendant, in and about the mason work and excavation in the erection and building of three four-story brick dwellings, in the city of Albany, or anywhere else, or that he is indebted to him for any of said work.

And this defendant further answering, denies that he is indebted to the plaintiff for excavating and removing earth from cellars, (and thus continue denying the several allegations in the same words as charged in the complaint.)

[No. 370.]

Answer—another action pending for the same cause of action.

(Commence as before.) That there is another action pending in this court in which this defendant commenced an action to recover moneys secured on certain promissory notes against the plaintiff in this action, and that previous to the commencement of this action by his answer in said former action has set up and claims as a good and valid defence, the same matters for which this action is brought. And the said former action now remains depending in this court, being yet undetermined and undismissed.

[No. 371.]

General answer of infant in foreclosure.

(Title of action.)

This defendant, answering by his said guardian, says, that he is a stranger to all and singular the matters and things in the complaint in this action set forth, and that this de-

fendant is an infant under the age of twenty-one years, and claims such interest in the premises as he is entitled to, and he submits his rights and interests in the matters in question in this action to the protection of this honorable court.

[No. 372.]

Answer—general denial.

(Commence as before, then) And as to every allegation in said complaint, not hereinbefore specifically admitted or denied, these defendants have not any knowledge or information sufficient to form a belief, and ask the same benefit of this their answer, as if they had demurred to said complaint, for the insufficiency thereof.

[No. 373.]

Answer—general denial—(another form.)

(Commence as before.) The above named defendant answers to the complaint of plaintiff in the above entitled action, and denies each and every allegation alleged in plaintiff's complaint.

[No. 374.]

Conclusion of answer.

Whereupon this defendant demands that the injunctional order of this court be set aside, and that this defendant be restored to his rights in the premises, and have compensation of the plaintiff for the damages and costs he has most wrongfully sustained by this action.

M. R., Defendant's Att'y, Albany.

[No. 375.]

Another form.

And therefore, these defendants aver and insist that the said supposed agreement mentioned in the complaint, was and is illegal and void, and of no binding force and validity whatever.

A. B., Defendant's Att'y, New York.

[No. 376.]

Another form.

Wherefore this defendant demands judgment in his favor for the sum of five hundred dollars, and interest thereon from the third day of December, 1851, together with the costs which he has sustained in this action.

C. R., Defendant's Att'y, Buffalo.

[No. 377.]

Report of clerk on assessment of damages.

(Title of action.)

Having examined and ascertained, I do hereby report that the plaintiff in this action do recover against the defendant the sum of two hundred dollars damages, besides costs.

April 6, 1852.

R. L., Clerk.

[No. 378.]

Report of justice on default of defendant at the circuit.

(Title of action.)

This action having been called in its order on the calendar, and the defendant, though called came not, but made default, and a trial by jury having been waived on the part

of the plaintiff by the consent of the court: after hearing the evidence on the part of the plaintiff, I hereby report that I find there is due from the defendant to the plaintiff herein, the sum of five hundred dollars, besides costs.

Albany, March 12, 1852.

IRA HARRIS.

[No. 379.]

Report of justice (on trial at circuit,) in favor of the plaintiff.

(Title of action.)

This action having been called in its order on the calendar, and a trial by jury having been waived by the parties hereto in open court: after hearing the evidence presented and after due deliberation thereon, I hereby report that I find that there is * due from the defendant to the plaintiff herein, the sum of one thousand dollars, besides costs.

Albany, March 12, 1852.

IRA HARRIS.

[No. 380.]

Report of justice (on trial at circuit,) in favor of defendant.

(As in the last form to the *, then) Nothing due from the defendant to the plaintiff in this action.

Albany, March 13, 1852.

A. J. PARKER.

[No. 381.]

Report of referee in favor of plaintiff.

(Title of action.)

I, A. B., appointed sole referee in this action, having heard the proofs and allegations of the parties, and the argument of their counsel, do certify and report that I find for facts in this action the following, viz:

That defendants, J. C. and T. B., * are properly chargeable as endorsers, and G. B., as maker of a promissory note for four hundred and twenty-two dollars, dated October 15, A. D., 1851, and payable thirty days after date, and that the whole amount, principal and interest now due on said note amounts to four hundred and thirty-three dollars and eighty-one cents; and as a conclusion of law that the defendants in the above entitled action owe the plaintiffs that sum, besides costs.

Albany, April 9, 1852.

A. B., Sole Referee.

[No. 382.]

Report of referee in favor of defendant.

(As in the last form to the *, then) were properly chargeable for the work, labor and services of the plaintiff and his servants for the said defendant, and at their request, to the amount of four hundred dollars, and that the said plaintiff agreed to take, and did take, of the said defendants the promissory note of one C. D., endorsed by G. H., in full payment and discharge thereof, and as a conclusion of law that the said defendants are not indebted to the plaintiff for any of the matters and things demanded in this action.

Buffalo, April 12, 1852.

A. B., Sole Referee.

[No. 383.]

Report of amount due in foreclosure—all due.

(Title of action.)

To the Supreme court of the State of New York:

In pursuance and in virtue of an order of this court, made in the above action, and bearing date the 30th day of March, 1852, by which it was referred to me, as sole referee, to

compute, ascertain and report the amount due to the plaintiff for principal and interest on the bond and mortgage mentioned and set forth in the complaint in this action, * and report thereon to this court with all convenient speed, I, the subscriber, do respectfully certify and report, that I have computed and ascertained the amount due to the plaintiff in this action as aforesaid, and that the amount so due on the said bond and mortgage, for principal and interest up to and including the date of this report, is the sum of five hundred and eighty-nine dollars.

And I do further certify and report, that the schedule hereunto annexed, marked A., and making part of this my report, contains a statement and account of the principal and interest moneys due to the plaintiff as aforesaid, the period of the computation of the interest and its rate, and to which for greater certainty, I refer.

All which is respectfully submitted. Dated April, 10, 1852.

A. B., Sole Referee.

[No. 384.]

Schedule marked A, referred to in the preceding report.

One bond, dated September 10th, 1849, in the penal sum of $1,000, conditioned to pay $500, as follows, viz: on the 1st day of January, 1851, with interest; which bond is accompanied with a mortgage of the same date.

Principal sum due, ...	$500
Interest thereon, from September 10, 1849, to April 10th, 1852, being 2 years and seven months, at seven per cent. per annum, is,.....	89
Amount due plaintiff this April 10, 1852, is,.....	$589

A. B., Sole Referee.

[No. 385.]

Report of amount due in foreclosure—not all due—cannot be sold in parcels.

(As in the last form to the *, then) and also to ascertain and report the situation of the mortgaged premises, and whether, in his opinion, the same can be sold in parcels, without injury to the interests of the parties; and if he shall be of opinion that a sale of the said premises in one parcel will be most beneficial to the parties, then that he report his reasons for such opinion, and that he report thereon to this court with all convenient speed: I, the subscriber, duly appointed said referee, do respectfully certify and report, that I have computed the amount due to the plaintiff in this action as aforesaid, and that the amount so due on the said bond and mortgage, for the principal and interest, up to and including the date of this report, is the sum of one thousand two hundred and eighty one dollars, and ninety two cents.

And I do further certify and report, that the schedule hereto annexed, marked A, and making a part of this my report, contains a statement and account of the principal and interest moneys due to the plaintiff as aforesaid, the period of the computation of the interest, and its rate, and to which, for greater certainty, I refer.

And I do further certify and report, that I have computed and ascertained the amount secured to be paid by said bond and mortgage, and which remains unpaid, including interest thereon to the date of this my report,, and the same is the sum of two thousand five hundred sixty-three dollars and eighty-four cents.

Schedule marked B, to this my report annexed, and forming a part thereof, contains a statement of the said principal and interest moneys respectively, the period of the computation of the interest and its rate, and to which, for greater certainty, I refer.*

And I do further certify and report, that I have ascertained the situation of said mortgaged premises, and am of

opinion the same cannot be sold in parcels without injury to the interests of the parties, for the reason that the mortgaged premises consist of a house and lot in the city of Albany, which cannot well be divided.

All of which is respectfully submitted.

Dated April 10, 1852.

A. B., Sole Referee.

[No. 386.]

Schedule marked A, referred to in the preceding report.

One bond dated April 1, 1848, in the penal sum of $4,000, conditioned to pay $2,000 as follows, viz: $1,000 in one year from date with interest, and $1,000 in five years from date with interest, which bond is accompanied by a mortgage of the same date.

Principal sum due,	$1,000 00
Interest thereon from April 1, 1848, to April 10, 1852, being four years and ten days, at seven per cent. per annum, is	281 92
Amount due plaintiff this April 10, 1852,	$1,281 92

A. B., Sole Referee.

[No. 387.]

Schedule marked B, referred to in the preceding report.

Same bond and mortgage mentioned in Schedule A.

Principal sum secured and unpaid,	$2,000 00
Interest thereon from the first day of April, 1848, to the tenth day of April, 1852, being four years and ten days, at seven per cent. per annum, is	563 84
Whole amount secured and unpaid, including interest thereon to this day, is	$2,563 84

Dated April 10, 1852.

A. B., Sole Referee.

[No. 388.]

Report of amount due in foreclosure—part not due—absent or infant defendant—may be sold in parcels.

(As in the last form to the *, then) And I do further certify and report, that I have taken proof of the facts and circumstances stated in said plaintiff's complaint, and have examined the said plaintiff on oath as to any payments which may have been made to him or to any person for his use, on account of the demand mentioned in said complaint, and which ought to be credited thereon, and such proofs except those which are documentary, and such examinations, are to this my report annexed, and I am of opinion that the facts and circumstances stated in said complaint are true.

And I do further certify and report, that I have ascertained the situation of said mortgaged premises, and am of opinion the same can be sold in parcels without injury to the interests of the parties, for the reason that the mortgaged premises consist of five lots in the seventh ward of the city of Albany, and the same can well and advantageously be sold separately. All of which is respectfully submitted.

Dated Albany, April 10, 1852.

A. B., Sole Referee.

[No. 389.]

Report in action to dissolve marriage because of adultery.

(Title of action.)

To the supreme court of the state of New York:

In pursuance of an order of this court made in the above action, and dated the twenty-fifth day of February, 1852, by which it was referred to me as sole referee to take proof of all the facts charged in the plaintiff's complaint in this action, and to report such proof to this court with my

opinion thereon: I, the subscriber, referee as aforesaid, to whom the execution of said order was confided, do hereby certify and report:

That I have taken proofs in this action on the part of the plaintiff, (and defendant) and that such proofs are hereto subjoined and make a part of this my report.

And I do further certify and report as required by the said order, that in my opinion all the material facts charged in the plaintiff's complaint in this action are true, and have been sufficiently proved before me, and that the said defendant has committed the several acts of adultery charged in the said complaint. All of which is respectfully submitted.

Albany, March 31, 1852.

A. B., Sole Referee.

[No. 390.]

Depositions annexed to report.

(Title of action.)

Depositions taken this 25th day of March, 1852, in the above action, on the part and behalf of the plaintiff (and defendant) before A. B, sole referee herein.

Mr. C. D. appears as counsel for the plaintiff; no one appearing for the defendant; (or Mr. E. F. appearing as counsel for the defendant.)

A. H., a witness produced for the plaintiff, was duly sworn, and on being orally examined by the counsel for the plaintiff, deposeth as follows: I am twenty-four years of age and upwards, and reside in the city of Buffalo. I am acquainted with both the parties in this action. (Set out the evidence at length.)

(And the said A. H. being cross examined by the counsel for the defendant, testified as follows:) (Set out cross-examination in full.)

A. H.

Subscribed and sworn to this 25th day of March, 1852, before me,

A. B., Referee.

[No. 391.]

Report—that a partition can be made.

(Title of action.)

To the supreme court of the State of New York:

In pursuance of an order of this court made in the above action, on the sixteenth day of January, 1852, by which it was referred to me, to take proof of the plaintiff's title and interest in and to the premises in the plaintiff's complaint mentioned, and of the several matters set forth in the said complaint, and to ascertain and report what share or part of the said premises belongs to each of the parties to this action, so far as the same could be ascertained, and the nature and extent of their respective rights therein, and an abstract of the conveyances by which the same are held; and also to inquire and report whether the said premises, or any lot or separate parcel thereof are so circumstanced that an actual partition thereof cannot be made, * I, the subscriber, referee, as aforesaid, do report:

That having been attended by the attorneys for the several parties who appeared in this action, I proceeded to a hearing of the matters so referred.

I further report, that on such hearing I took proof of the facts stated in the complaint, and find that the material facts set forth are true.

And I further certify and report, that the following is an abstract of the conveyances, by which the premises described in the complaint are held, that is to say:

J. B., and A., his wife, to L. M.

Warrantee deed, dated July 12, 1815. Consideration, $1,000. Duly acknowledged and recorded, July 16, 1815, in the clerk's office of Albany county, in book W. W. of Deeds, page 605, &c., contains the same premises set forth in the complaint in this action.

L. M. the father of the plaintiff, died on or about the 12th day of March, 1845, and by his will gave a life estate in all

his real estate, to his wife M. the mother of the said A. M., and at her death to be equally divided among all the children of the said testator, share and share alike. Said last will and testament was proved and recorded as a will of real estate, on the sixteenth day of April, 1845, in the office of the surrogate of the county of Albany.

The said M., wife of the said testator, died on or about the first day of December, 1851, leaving her surviving as the children and heirs at law of the said testator, the following, to wit: A. and B., sons of L. M. deceased, and N., wife of O. M., daughter of the said L. and M., and C. and D., sons of E., deceased, and grand children of the said L. M. and S., widow of the said E., deceased.

The legal estate and interest of the parties in the premises are as follows:

The plaintiff A. and the defendant B. are each entitled to one undivided fourth part thereof.

The defendants, O. M. and C. his wife, are entitled to one undivided fourth part thereof in right of the said C.

The defendant S., as widow of the said E., deceased, is entitled to a dower right in one undivided fourth thereof, and the said C. and D. are each entitled to one undivided eighth part, subject, however, to the dower of S., their said mother.

The estate is in the parties in fee, subject to the marital and dower interests as appear above.

I further report, that the premises described in the complaint are so circumstanced, that in my opinion a partition thereof can be made without material injury to the rights or interest of the several owners thereof; and that a partition of such premises would be more advantageous to such owners than a sale thereof.

All which is respectfully submitted.

March 10, 1852.

A. B., Sole Referee.

[No. 392.]

Report—that sale is necessary in partition.

(As in the last form to the *, then) and if the said referee should arrive at the conclusion that a sale of the whole of the said premises, or any lot or separate parcel thereof will be necessary, that he specify the same in his report, together with the reasons, rendering a sale necessary; and in such a case, that he also ascertain and report whether any person not a party to this action, has a specific lien on the undivided share or interest of any of the parties in that portion of the premises which it is necessary to sell; and that he further inquire and report whether the undivided share or interest of any of the parties in the premises is subject to any general lien or incumbrance, by judgment or decree; and that he ascertain and report the amount due to any person which is either a specific or general lien or incumbrance upon all or any of the shares or interests of the parties in the premises to be sold, and which would remain as an incumbrance thereon in the hands of the purchaser: I, the subscriber, referee, as aforesaid, do respectfully report:

That having been attended by the attorneys for the several parties who appeared in the action, I proceeded to a hearing of the matters so referred, after having caused a notice to be published as required by law, for all general lien creditors, by judgment, decree or otherwise, on the undivided share or interest of any of the parties in the premises, to produce to me proof of their respective liens and incumbrances, together with satisfactory evidence of the amount due thereon, and to specify the nature of such incumbrances, and the dates thereof respectively.

I further report, that on such hearing, I took proof as to the facts stated in the complaint, and find the material facts therein set forth are true.

And I further certify and report that the following is an abstract of the conveyances by which the premises described in the complaint are held, that is to say:

The last will and testament of W. S., the common source of title, who died, seized and possessed of the premises in the complaint described.

By such will he devised unto his wife, B. S., since deceased, all the rents, issues and profits and income of his real estate during her natural life, and after her death he gave, devised and bequeathed the same to his four children, E., F., G., wife of R. M., and H., each one-fourth part thereof, to have and to hold the same, unto his said children each one-fourth part thereof, and to their respective heirs forever. Will dated January 10, 1841, proved and recorded in the Albany county surrogate's office, on the sixth day of July, 1846. That in April, the said W. S. died, leaving his four children and his wife, him surviving. That in March, 1851, the said B. S., widow of the said testator, departed this life. That F. S., one of the children of the said W. S., has also departed this life, leaving him surviving his widow, M. S., and two children, to wit: P. S. and R. S.

And I do further certify and report, that the legal estate and interest of the parties in the premises are as follows:

The plaintiff, E. S., is entitled to one undivided fourth part.

The defendant, R. M., and G. M. his wife, in right of the said G., are entitled to one undivided fourth part.

The defendant, H., is entitled to one undivided fourth part.

The defendant, M. S., widow of the said F. S. deceased, is entitled to dower in the one-fourth part of which he died seized.

The defendants P. S. and R. S., children of said F. S., deceased, are each entitled to one-eighth part, subject to the dower of the said M. S., their mother.

The estate is in the parties in fee, subject to the marital interests therein, and the dower interests which appear above.

And I do further certify and report, that the premises described in the complaint in this action, are so circumstanced that in my opinion, a partition thereof cannot be made without great injury and prejudice to the owners thereof. The premises consist of three city lots, and

to lessen their present size would render them valueless. These facts in connection with the number of the owners and persons interested, render a partition difficult and impracticable.

I do further certify and report, that I have caused the necessary searches to be made, and I find two creditors, not a party to this action, and no more, have any specific lien by mortgage, devise or otherwise, upon the undivided share or interest of any of the parties in the premises, and that those two creditors are G. B., of the city of Albany, and S. G. of the same place, as follows:

E. S. and wife
to
G. B.

Bond and mortgage, dated April 5, 1849, given to secure the payment of the sum of five hundred dollars, in two years from the date thereof.

Mortgage recorded in the office of the clerk of the county of Albany, on the fifteenth day of April, 1849. That the whole of said mortgage, with interest from April 5, 1851, is unpaid.

SUPREME COURT.

S. G.
agt.
H. S.

Judgment for $120, obtained and docketed in Albany county, September 4, 1851, all which is unpaid.

That there is no other general lien or incumbrance by judgment or decree upon the undivided share or interest of either of the parties in the premises.

And I further report that no creditor, not a party to this action, having any general lien on any undivided share or interest in the premises, by judgment or decree, appeared before me on the said reference, to establish his claim in pursuance of the notice published by me, except as aforesaid.

All of which is respectfully submitted.

April 5, 1852. A. B., Referee.

[No. 393.]

Report of commissioners in partition.

(Title of action.)

To the supreme court of the state of New York:

In pursuance of and in obedience to a commission in the above entitled action, issued out of and under the seal of this court, and directed and delivered to the undersigned, commissioners therein named, tested the twenty-fifth day of January, 1852, which said commission is hereto annexed: We, the said commissioners do hereby respectfully report and return:

That having been first duly sworn, and having severally taken the oath hereto annexed, we have carefully examined th premises described in said commission, and caused them to be surveyed in our presence, and have made partition thereof between the said parties, according to their respective rights and interests therein, as the same have been ascertained, declared and determined by the said court, as we were by the said commission commanded, in manner following: We divided the whole of the said premises into two allotments, which are designated on the map hereto annexed by the letters A and B, each of which allotments is in our opinion, of equal value, and that, being in our judgment the most beneficial division, all circumstances considered, that could be made of such premises. And that we have set off in severalty to the said L. M. all that certain parcel of said premises designated on said map by the letter A, and which is bounded as follows: (insert de scription) as will more fully appear by reference to said map.

And we have also set off in severalty to the said N. M. all those certain pieces or parcels of said premises designated on said map by the letter B., which are bounded as follows: (insert description,) as will also more fully appear by reference to said map.

And we further certify and report, that the items of the various expenses attending the execution of the said com-

mission, including our fees as commissioners, are contained in a schedule hereto annexed marked C., and forming a part of this our report. And that for the better understanding and more clear elucidation of the shape and situation of the said premises, and of the manner in which such partition has been made by us, we have caused to be made a map thereof, showing what parts of the said premises have been allotted to the respective parties, which map forms a part of this our report, and is hereto annexed, marked D.

In witness whereof, we the said commissioners have set our hands to this our report, this 20th day of March, 1852.

C. M.
H. B. } Commissioners.
L. S.

(To be acknowledged in same manner as a deed.)

[No. 394.]

Report of sale in partition.

(Title of action.)

To the supreme court of the State of New York:

In pursuance of an order made in this court in the above action, and dated the third day of January last, I, the subscriber, referee, duly appointed, to whom the execution thereof was confided, do report:

That having caused a notice of the time and place of sale of the premises mentioned in said decretal order, containing a brief description thereof, to be published once in each week for six weeks immediately previous to such sale, in one of the public newspapers printed in the county of Albany, where such premises are situated, and having also caused a copy of such notice to be put up at three of the most public places in the city of Albany, where the said premises are situated: I did on the thirtieth day of March, 1852, at 12 o'clock, noon, that being the time specified in the said notice, attend at the rotunda of the Merchants' Exchange in said city, the place therein mentioned, and exposed the said premises for sale, at public auction, to the highest bidder, as directed by said order.

I do further report, that the several lots or parcels of land so directed to be sold as aforesaid, were put up for sale separately, and were each and every of them struck off to T. B., for the following sums: Lot No. 1, for the sum of $1,000; lot No. 2, for the sum of $2,000; and lot No. 3, for the sum of $4,000; those sums being the highest sums bidden for the said lots respectively, and the said T. B. being the highest bidder therefor; which several sums amount in the aggregate to $7,000.

That the terms and conditions of such sales were reduced to writing, and made known to the persons attending such sale, previous to putting up the said lots, and were as follows: the purchaser or purchasers of each lot or separate parcel, were to pay ten per cent of the purchase money down, on the day of sale, and the residue when the sale should be confirmed, and the deed delivered. And that the said T. B. has signed the written conditions of sale above mentioned, together with an acknowledgment that he has purchased the premises upon those terms, and he has paid to me the amount required to be paid down.

All of which is respectfully submitted.

April 2, 1852.

A. B., Referee.

[No. 395.]

Final report after sale in partition.

(Title of action.)

To the Supreme Court of the State of New York:

In pursuance of an order of this court, made the twentieth day of January, 1852, I the subscriber, do respectfully report:

That in obedience to the said order, I have executed, acknowledged, and delivered to L. B., the purchaser of the premises directed to be sold by me, a deed of such premises, on receiving from him the sum of $4,940, the price or sum for which the said premises were sold to him, as mentioned in my former report of such sale, made in pursuance of said order, and bearing date the tenth day of March last past;

and upon his complying with all the conditions upon which the said deed was to be delivered.

And I further report that I have paid to the attorney for the plaintiff in this action, the sum of $60, for the costs of the plaintiff as taxed in this action, and have taken a receipt therefor, which is hereto annexed; that I have paid M. S., the guardian ad litem of the infant defendants, the sum of $15, being the amount of his costs, as taxed, and have taken his receipt therefor, which is hereto annexed; that I have retained in my hands the sum of $50, being the amount of my fees, commissions and disbursements on said sale; that I have paid to the collector of the town of Watervliet the sum of $15, for taxes upon the said premises; that I have paid the defendant, M. C., the sum of $500, being the amount reported due to him upon his mortgage on the said premises, and that I have paid to C. M., $150, due on his judgment against the plaintiff in this action.

And I further report that the residue of the net proceeds of the sale of the said premises, I have divided and distributed as follows: to the plaintiff the sum of $1,050, which with judgment docketed against him and paid as above, is his share of the distributive proceeds; to the defendant, R. M., the sum of $700, which, with the amount paid to satisfy the said bond and mortgage, is his share of the distributive proceeds; and to the defendant, R. C. and wife, the sum of $1200, being their share of the said proceeds, in right of the said wife; and the remaining share of $1200 belonging to the infant defendants, subject to the dower interest of their mother, (she declining to receive a gross sum in satisfaction thereof,) I have now brought into court that the same may be invested for their benefit. And that I have taken from the plaintiff and such defendants as have received their shares, their respective receipts for the several amounts paid to them as aforesaid.

And I further report that I have let the said L. B. into the possession of the premises so purchased by him.

All which is respectfully submitted.

April 10, 1852. A. B., Sole Referee.

[No. 396.]

Return to process of not found.

The within defendant is not found in my bailiwick.

S. B., Sheriff.

[No. 397.]

Return to execution against the person, paid or settled.

Satisfied.

W. B., Sheriff.

or :

Within defendant discharged by the plaintiff from this execution.

W. B., Sheriff.

[No. 398.]

Return to execution of no property.

The within named defendant has no goods or chattels, lands or tenements, in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within mentioned, or any part thereof, according to the exigency of this writ.

W. B., Sheriff,
By R. H. B., Deputy.

[No. 399.]

Return to execution when collected.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels, lands and tenements, of the within John Doe, the damages (or debt and damages) within mentioned.

W. B., Sheriff.

or :

" Satisfied."

W. B., Sheriff.

[No. 400.]

Return to execution where property remains unsold for want of buyers.

By virtue of this writ to me directed, I have taken goods and chattels of the within named John Doe, to the value (or of part) of the damages (or debt and damages) within mentioned, which goods and chattels remain in my hands unsold for want of buyers; therefore I cannot have that money at the day and place within contained, as I am ... commanded.

W. B., Sheriff.

or:

Goods taken, but unsold for want of buyers.

W. B., Sheriff.

[No. 401.]

Return to process of cepi corpus.

I have taken the within named defendant, whose body I have ready at the day and place within contained, as within I am commanded.

W. B., Sheriff.

[No. 402.]

Return of service of summons.

I, W. B., sheriff of the city and county of Albany, certify that on the 10th day of March, 1852, at the city of Albany, I served the within summons by delivering a copy thereof to L. B. the within defendant, personally, (together with a copy of the complaint therein mentioned) of which the within is a copy.

W. B., Sheriff.

[No. 403.]

Return of arrest.

I have taken and arrested the said John Doe, within named, as I am by the writ within commanded.

W. B., Sheriff.

[No. 404.]

Return of arrest and imprisonment for want of bail.

I have taken the within named J. C., who remains imprisoned in the common jail of Albany county, in my custody for want of bail.

W. B., Sheriff.

[No. 405.]

Return of arrest and rescue.

By virtue of this writ to me directed, I took and arrested the within named L. M., according to the exigency of the said writ, and safely kept him in my custody until divers persons, to me unknown, on the fifth day of April, 1852, at Troy, with force and arms assaulted and ill treated me, and L. M., out of my custody, then and there rescued, and the said L. M. then and there rescued himself and escaped out of my custody, against the peace of the people of the State of New York; and afterwards the said L. M. is not found in my bailiwick.

W. B., Sheriff.

[No. 406.]

Return of no goods of testator in action against executor.

The within named A. B. has no goods or chattels which were of the within named C. D., deceased, at the time of his death, in his hands to be administered in my bailiwick,

whereof I can cause the damage within mentioned or any part thereof; (and he has not any of his own proper goods or chattels in my bailiwick, whereof I can cause to be made the within mentioned sum of sixty dollars, parcel of the sum of five hundred dollars or any part thereof, according to the exigency of the writ.)

W. B., Sheriff,
By R. H. B., Deputy.

[No. 407.]

Return of goods taken or replevied.

By virtue of the within order, I have duly taken and delivered to the plaintiff, within named, * the goods and chattels within specified as I am within commanded.

W. B., Sheriff,
By R. B., Deputy.

[No. 408.]

Return where only part can be found.

(As in the last form to the *, then) A part only of the goods and chattels contained in the said order, to wit: (here insert the particulars) and that the residue thereof, I could not find, the same having been removed or concealed, so as to make replevin or delivery thereof.

W. B., Sheriff.

[No. 409.]

Return where none of the goods can be found.

I do certify and return to the within order that no part of the goods and chattels therein mentioned, could be found by me so as to make delivery thereof, as I am within commanded.

W. B., Sheriff.

[No. 410.]

Return where defendant gives security and keeps the goods.

I do certify and return that I took the within specified goods and chattels in order to make delivery thereof to the plaintiff within named, but before such delivery was made, the defendant in the within entitled action, required a return thereof to him, and gave a written undertaking, executed by two sureties, of which the annexed is a copy.

W. B., Sheriff.

[No. 411.]

Return to a writ of habeas corpus.

I do hereby return to the justices of the supreme court, (or the Hon. Ira Harris, one of the justices of the supreme court,) that before the coming to me of the within writ the said E. F. was committed to my custody, (or was arrested by me) and is detained by virtue of another writ to me directed, a copy of which annexed I transmit to you. Nevertheless, I have the body of the said E. F. before you at the day and place within mentioned, as I am within commanded.

W. B., Sheriff.

[No. 412.]

Return to a writ giving possession.

By virtue of the within writ to me directed on the first day of March, 1852, I have caused the within named A. B. to have possession of the premises within described, for his term within written, with the appurtenances as in all things by the said writ I am commanded.

W. B., Sheriff.

[No. 413.]

Return of warrant under proceedings for the collection of demands against ships and vessels.

In obedience to the within warrant, I do certify, and return to Hon. Ira Harris, one of the justices of the supreme court, (or to Hon. A. D. Robinson, Albany county judge,) that I have attached and seized the vessel therein named, together with her tackle, apparel and furniture, and she is now and ever since hath been safely kept by me, as I am within commanded.

W. B., Sheriff.

A just and true inventory made and signed by me of all the property seized by virtue of the annexed warrant, that is to say: One sloop, called, &c., (here set forth the apparel and furniture.)

W. B., Sheriff.

[No. 414.]

Returns to writs of ne-exeat.

Where defendant has been arrested and has given security.—I certify and return, that I have caused the within named C. D., personally to come before me, and he hath found bail in the sum of one thousand dollars, according to the command of the within writ.

W. B., Sheriff.

Where defendant is not to be found.—I certify that the within named C. D. is not to be found in my bailiwick.

W. B., Sheriff.

Where defendant has been arrested and committed for want of bail.—I certify that I have caused the within named C. D. personally to come before me, and he having refused to give the bail or security mentioned, I have his body in the common jail of the county of Albany under my custody.

W. B., Sheriff.

[No. 415.]

Return of service of subpœna.

I certify that on the first day of March inst., at Albany, I subpœnaed the within named C. D. as I am within commanded, by showing to him the within subpœna, and at the same time and place giving to him a copy of the said subpœna, (or a subpœna ticket containing all the facts set forth in the said subpœna,) and at the same time I paid (or tendered in cash) to him four dollars and fifty cents.

Albany, March 3, 1852.

W. B., Sheriff,
By R. H. B., Deputy.

[No. 416.]

Return to attachment.

I hereby certify and return, that by virtue of the within attachment I have seized, taken into my possession and attached the property of the defendants within named, specified in the inventory hereto annexed, and appraised the property therein specified at the sums mentioned in the annexed inventory. Albany, April 10, 1852.

W. B., Sheriff.

(Annex inventory and appraisal.)

[No. 417.]

Satisfaction of judgment.

I, A. B., acknowledge satisfaction of a judgment recovered against C. D., in the supreme court, between A. B., plaintiff, and C. D., defendant, for five hundred and twenty-five dollars and forty-three cents, damages and costs.

Judgment roll (record) filed and docketed the tenth day of June, 1850, in the clerk's office of the city and county of Albany. Dated the tenth day of February, 1852.

A. B.

Albany City and County, ss: Subscribed and acknowledged before me, this 11th day of February, 1852, by A. B., personally known to me to be the person described in and who executed the above.

E. F., Commissioner of Deeds.

[No. 418.]

Sheriff's receipt on receiving execution.

(Title of action.)

Received of the plaintiff's attorney, the execution in this action, endorsed to "Levy $201.62, with interest from the ninth day of July, 1852, and return this execution within sixty days after its receipt by you to the Albany county clerk's office." Albany, July 20, 1852.

W. B., Sheriff,
By R. H. B., Deputy.

[No. 419.]

Sheriff's receipt for moneys received from a person indebted to the judgment debtor.

SUPREME COURT.

A. B. *agt.* C. D. } E. F., Plaintiff's Att'y.

Judgment docketed July 6, 1852, for $556.62, in the county of Albany, and execution issued to the sheriff of the city and county of Albany, for the above amount, with interest.

Received of G. H., fifty dollars, to apply on the above execution in pursuance of section two hundred and ninety-three of the "Code of Procedure" of this State.

Albany, July 24, 1852.

W. B., Sheriff.
By R. H. B., Deputy.

[No. 420.]

Subpœna for the circuit.

The People of the State of New York, to A. B. and C. D., greeting:

We command you, that all business and excuses being laid aside, you and each of you appear and attend before the justices of the supreme court, or some or one of them, at a circuit court to be held in the City Hall, in the city of Albany, in and for the county of Albany, on the second day of March next, at ten o'clock in the forenoon, to testify and give evidence in a certain action now pending in the supreme court, then and there to be tried between E. F., plaintiff, and G. H. defendant, (in a plea of assumpsit,) * and for a failure to attend, you will be deemed guilty of contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto. Witness, Ira Harris, Esquire, one of our justices of our supreme court, the tenth day of February, 1852.

R. L., Clerk.

J. K., Attorney.

[No. 421.]

Subpœna ticket for the circuit.

By virtue of a writ of subpœna to you directed and herewith shown to you, you are commanded, that all business and excuses being laid aside, you be and appear in your proper person, before the justices of the supreme court, or some or one of them, at a circuit court, to be held in and for the county of Albany, at the city hall in the city of Albany, on the second day of March next, at ten o'clock in the forenoon, to testify all and singular what you may know in a certain action now pending in the supreme court, then and there to be tried, between E. F., plaintiff, and G. H., defendant, (in a plea of assumpsit) on the part of the plaintiff,

(or defendant.) And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

Dated the 10th day of February, 1852.

J. K., Attorney.

To A. B. and C. D.

[No. 422.]

Subpœna for party for circuit.

The People of the State of New York to A. B., Greeting:

We command you, that all business and excuses being laid aside, you (and each of you) appear and attend before the justices of the supreme court, or some or one of them, at a circuit court to be held in the city hall in the city of Albany, in and for the county of Albany, on the second day of May next, at ten o'clock in the forenoon, to be examined as a witness, at the instance of the plaintiff, (or defendant,) in a certain action now pending in the supreme court, then and there to be tried between you and A. B., plaintiff, (or C. D., defendant,) (of a plea of assumpsit,) and for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

Witness, Ira Harris, Esquire, one of the justices of our supreme court, the tenth day of April, 1852.

R. L., Clerk.

J. W., Attorney.

[No. 423.]

Subpœna ticket for party for circuit.

By virtue of a writ of subpœna to you directed, and herewith shown to you, you are commanded, that all business and excuses being laid aside, you be and appear in your

proper person, before the justices of the supreme court, or some one of them, at a circuit court, to be held in and for the county of Albany, at the city hall, in the city of Albany, on the second day of May next, at ten o'clock in the forenoon, to be examined as a witness at the instance of the plaintiff, (or defendant,) in a certain action now pending in the supreme court, then and there to be tried between you and C. D., defendant, (or A. B., plaintiff,) (in a plea of assumpsit,) on the part of the defendant (or plaintiff.) And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party agrieved, and forfeit fifty dollars in addition thereto. Dated the tenth day of April, 1852.

By the court.

J. W., Att'y for Plaintiff,
(or Defendant.)

To A. B., Plaintiff, (or C. D., Defendant.)

[No. 424.]

Subpœna on reference.

The People of the State of New York, to A. B. and C. D., greeting:

We command you, that all business and excuses being laid aside, you and each of you appear and attend before Amos Dean, Esq., referee, duly appointed under rule of court, on the fifth day of May next, at ten o'clock in the forenoon, to testify and give evidence in a certain action now pending in the supreme court, &c., (to the end as in subpœna for circuit.)

[No. 425.]

Subpœna ticket for reference.

By virtue of a writ of subpœna, to you directed and herewith shown, you are commanded, that all and singular business and excuses being laid aside, you be in your proper

person before Amos Dean, Esq., referee, duly appointed under a rule of court, on the fifth day of May next, at ten o'clock in the forenoon, at his office in the city of Albany, to testify all and singular what you may know, &c., (to the end as in subpœna ticket for circuit.)

[No. 426.]

Subpœna for party for reference.

The People of the State of New York, to A. B., greeting:

We command you, that all business and excuses being laid aside, you (and each of you) appear and attend before Amos Dean, Esq., referee, duly appointed under a rule of court, on the sixth day of May next, at ten o'clock in the forenoon, at his office in the city of Albany, to be examined as a witness, &c., (to the end as in subpœna for party for circuit.)

[No. 427.]

Subpœna duces tecum.

(As in the regular subpœna for the circuit to the *, then) and that you bring with you and produce then and there a certain book, being the (here describe the book or paper sufficiently that the witness cannot mistake it;) and for a failure, &c., (to the end as in the usual subpœna.)

[No. 428.]

Subpœna ticket, duces tecum.

Insert in the subpœna ticket the "*duces tecum*" clause in the proper place, as in the subpœna.

[No. 429.]

Summons for a witness under a commission from another State.

In pursuance of a commission issued under the seal of the court of common pleas of the county of Hampden, State of Massachusetts, dated the 23d day of January, 1852, and to me (or to A. B., of the city of Albany,) directed, I, Ira Harris, one of the justices of our supreme court, do hereby summon you, C. D., to appear before me at my (or before the said A. B. at his) office, in the city of Albany, on the tenth day of February inst., at ten o'clock A. M., of the same day, to testify all and singular you may know in a certain cause now pending in said court of common pleas, between E. F., plaintiff, and G. H., defendant.

And hereof you are not to fail at your peril.

Dated the 8th day of February, 1852.

IRA HARRIS,
One of the justices of the supreme court.

[No. 430.]

Summons for a witness de bene esse.

In pursuance of the provisions of title III, of chapter VII, of part III, of the Revised Statutes, you are hereby summoned to appear and attend before me at my office in the city of Albany, on the fifth day of May inst., at ten o'clock in the forenoon, to testify and give evidence on behalf of G. H., in an action pending in the supreme court of this State, wherein the said G. H. is plaintiff, (or defendant) and B. C. is defendant (or plaintiff.)

And hereof you are not to fail at your peril.

May 3, 1852.

IRA HARRIS,
One of the justices of the supreme court.

[No. 431.]

Stipulation to put over the circuit.

(Title of action.)

It is hereby stipulated on the part of the plaintiff and defendant herein, that the trial of this action be deferred till the next September circuit, to be holden at the city hall in the city of Albany. May 10, 1852.

A. B., Plaintiff's Att'y.
D. C., Defendant's Att'y.

[No. 432.]

Stipulation to refer action.

(Title of action.)

It is hereby stipulated on the part of the plaintiff and defendant herein, that this action be referred to A. B., Esq., of the city of Albany, as sole referee to hear and determine the same. January 5, 1852.

A. M., Plaintiff's Att'y.
C. E., Defendant's Att'y.

[No. 433.]

Summons in actions for the payment of money only.

Supreme Court—Albany County:

To E. W., defendant: You are hereby summoned to answer the complaint of A. B., of the county of Albany, plantiff, which will be filed with the clerk of Albany county, (or of which a copy is hereto annexed,) and to serve a copy of your answer on me at Albany, within twenty days after the service of this summons, exclusive of the day of service; and if you fail to answer said complaint, as hereby required, the plaintiff will * take judgment against you for five hundred dollars, and interest thereon from the fifth day of January, 1852, besides costs.

L. M., Plaintiff's Att'y, Albany.

[No. 434.]

Summons in actions for relief.

(As in the last form to the *, then) apply to the court for the relief demanded in the complaint.

M. L., Plaintiff's Att'y, Albany.

[No. 435.]

Summons against heirs, devisees, legatees, &c.

SUPREME COURT.

To E. M. and A. H., heirs, (devisees or legatees) of C. D., deceased:

Whereas, M. G., of the city of Albany, obtained a judgment in this court on the tenth day of December, 1848, for the sum of six hundred dollars damages and costs, against C. D., now deceased, in an action, wherein the said M. G. was plaintiff, and the said C. D. was defendant, as appears by the record thereof in the county of Albany:

Now, therefore, you are hereby summoned as the heirs, (devisees or legatees, &c.,) of the said C. D., deceased, and required to show cause within twenty days after the service of this summons, why the said judgment should not be enforced against the estate of the said judgment debtor, in your hands respectively.

B. P., Att'y for above named Plaintiff,
Albany.

[No. 436.]

Affidavit to be annexed.

(Title of action.)

Albany City and County, ss: M. G. being sworn, says, that on the tenth day of December, 1848, he recovered a judgment against C. D., of the city of Albany, now deceased, for the sum of six hundred dollars, damages and costs in an ac-

tion, wherein this deponent was plaintiff, and the said C. D., defendant, and that the said judgment has not been satisfied, to his knowledge or information and belief, and that the amount due thereon is the sum of six hundred dollars, and interest thereon from the tenth day of December, 1848.

Sworn, &c. M. G.

[No. 437.]

Summons to bring in joint debtors.

SUPREME COURT—Schenectady County.

To E. M. and A. H. defendants:

M. C. of the city of Schenectady, having obtained a judgment in this court, in the above named county, on the sixteenth day of July last past, against one C. D., for the sum of one thousand dollars damages and costs, in an action in which the said M. C. was plaintiff, and the said C. D. and you E. M. and A. H. were defendants:

Now therefore, you are hereby summoned and required to show cause within twenty days after service of this summons, why you and each of you should not be bound by the judgment in the same manner as if you had been originally summoned in the said action.

R. P., Att'y for Plaintiff,
Schenectady.

[No. 438.]

Affidavit to be annexed.

(Title of action.)

Schenectady city and county, ss: M. C. of said city, being sworn says, that on the sixteenth day of July last past, he obtained a judgment against the above named defendant, C. D. in this action, for the sum of one thousand dollars damages and costs. And this deponent further says, that the debt for the recovery of which this action was brought and judgment obtained, was and is a debt due to

this deponent from the said C. D., E. M. and A. H., upon their joint (and several) contract, and for the payment of which they are jointly (and severally) liable to this deponent, and that the said judgment has not been satisfied, to his knowledge or information and belief, and that the whole amount of said judgment, and interest thereon, is still due.

Sworn, &c. M. C.

[No. 439.]

Substitution of attorney, consent for.

(Title of action.)

I hereby consent that A. B., Esq., of the city of Hudson, be substituted in my place as attorney and counsel for the above named defendant, (or plaintiff,) in this action.

Troy, May 3, 1852.

C. D., Defendant's
(or Plaintiff's) Att'y.

[No. 440.]

Substitution of attorney, notice of.

(Title of action.)

To M. N., Esq., plaintiff's (or defendant's) Att'y:

Sir: Please to take notice, that the subscriber has been substituted in the place of C. D., Esq., as attorney and counsel for the above named defendant, (or plaintiff,) in this action. Hudson, May 5, 1852.

Yours, &c.

A. B., Defendant's
(or Plaintiff's) Att'y.

[No. 441.]

Undertaking on injunction.

(Title of action.)

Whereas the above named plaintiff is desirous that an injunction issue against the above named defendant, in an action to be commenced in this court with the above title:

Now we, the said J. M., merchant of the city of Albany, E. B., printer, and S. A., tanner, of the same place, do hereby, pursuant to the statute, undertake that if the said defendant shall recover judgment in the said action, then the said plaintiff shall pay him, or his assigns, all damages which the said defendant may sustain, by reason of the said injunction, not exceeding the sum of one thousand dollars.

Dated February 14, 1852.

J. M. [L. S.]
E. B. [L. S.]
S. A. [L. S.]

(All undertakings should be acknowledged, and the sureties should justify.)

[No. 442.]

Undertaking on attachment.

(Title of action.)

Whereas, the above named plaintiff has applied, (or is about to apply) for a warrant of attachment against the property of the above named defendant:

Now therefore, we, A. B., carpenter, of the city of Albany, and C. D., merchant of the same place, undertake that if the above defendant recovers judgment in this action, the plaintiff shall pay all costs that may be awarded the said defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum of one thousand dollars.

A. B. [L. S.]
C. D. [L. S.]

[No. 443.]

Undertaking to discharge attachment.

(Title of action.)

A warrant of attachment having been issued against the property of the defendant herein:

Now, therefore, we, K. L., carpenter of the town of Watervliet, and M. N., and O. P., farmers of the same place, will on demand pay to the plaintiff, the amount of the judgment that may be recovered against the defendant in this action, not exceeding the sum of two thousand dollars. (Double the sum demanded in the complaint.)

K. L. [L. s.]
M. N. [L. s.]
O. P. [L. s.]

[No. 444.]

Undertaking for order of arrest.

(Title of action.)

Whereas, the above named plaintiff has made application (or is about to apply) for an order to arrest the above defendant in this action:

Now therefore, we, A. B., tanner, of the city of Utica, and C. D., merchant, of the same place, undertake that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of one thousand dollars.

A. B.
C. D.

[No. 445.]

Undertaking to discharge from arrest.

(Title of action.)

The above named defendant having been arrested by W. B., sheriff of the city and county of Albany, upon an order of arrest granted by the Hon. Ira Harris, one of the justices of the supreme court of the State of New York, in a certain action commenced in the above named court by the above named plaintiff, against the above named defendant:

We, K. L., merchant of the city of Albany, and M. N., tanner, and O. P., carpenter, of the same place, hereby undertake, in the sum of two thousand dollars, that the said defendant shall at all times render himself amenable to the process of the court during the pendency of this action, and to such as may be issued to enforce the judgment therein.

K. L.
M. N.
O. P.

[No. 446.]

Undertaking on claim of delivery of personal property (in replevin.)

(Title of action.)

The above named plaintiff having commenced (or being about to commence) an action against the defendant for the recovery of certain personal property mentioned and described in the affidavit of this plaintiff made for such purpose, being two hundred barrels of flour :

Now, therefore, we, A. B., merchant of the city of Buffalo, and C. D., merchant of the same place, do hereby acknowledge ourselves bound in the sum of two thousand dollars for the prosecution of this action and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, from any cause, be recovered against the said plaintiff. Dated May 5, 1852.

A. B.
C. D.

[No. 447.]

Approval of sheriff endorsed.

I approve of the within undertaking, both as to the form and the sufficiency of the sureties thereof.

W. B., Sheriff.

[No. 448.]

Undertaking requiring return of personal property.

(Title of action.)

The above defendant having required (or being about to require) the return to him of the personal property, taken by the sheriff of Albany county, in this action, to wit: two hundred barrels of flour:

Now, therefore, we, G. H., I. K. and L. M., merchants of the city of Albany, do acknowledge ourselves bound in the sum of two thousand dollars, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. Albany, May 6, 1852.

G. H.
I. K.
L. M.

[No. 449.]

Undertaking to sheriff on claim of third persons.

(Title of action.)

One G. B. having claimed to be the owner, and to have the possession of the personal property, to wit: two hundred barrels of flour, taken by the sheriff of the county of Albany, in this action:

Now we, A. B., C. D. and E. F., merchants of the city of Buffalo, hereby agree and undertake to indemnify the said sheriff against the claim of the said G. B.

Buffalo, May 8, 1852.

A. B.
C. D.
E. F.

[No. 450.]

Undertaking for costs on appeal.

(Title of action.)

The above named defendant (or plaintiff) having appealed to the court of appeals, from a judgment entered in the supreme court (or to the general term of the supreme court, from a judgment entered in the county of Albany in said court,) or (to the supreme court, from a judgment entered in the county court of Greene county,) on the sixth day of January, 1852, in favor of the above named plaintiff (or defendant) against the above named defendant (or plaintiff) for the sum of two hundred dollars damages and costs:

Now, therefore, we, A. B., C. D. and E. F., merchants, of the city of Albany, do undertake that the said appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars. Dated, &c.

A. B.
C. D.
E. F.

[No. 451.]

Undertaking to stay execution on appeal.

(As in the last form to the close, then add) And if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal. Dated, &c.

A. B.
C. D.
E. F.

[No. 452.]

Undertaking on answer of title in justice's court.

JUSTICE'S COURT.—Greene County.

C. D. *ads.* A. B. } Before M. N., Justice.

The above named defendant having put in an answer in this action, showing that the title to real property will come in question on the trial thereof:

Now we, C. D. and E. F., farmers, in the county of Greene, undertake, that if the plaintiff shall, within thirty days hereafter, deposite with the above named M. N., Esq., justice, a summons and complaint in an action in the county court for the same cause, the defendant will, within ten days after such deposit, give an admission in writing of the service thereof. Dated, May 2, 1852.

C. D.
E. F.

[No. 453.]

Undertaking on answer of title to real property in justice's court—defendant arrested.

(As in the last form to the close, then add) And that the defendant will at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein.

Dated May 2, 1852.

C. D.
E. F.

Approval endorsed.

I hereby approve of the within undertaking, both as to the form and the sufficiency of the sureties thereof.

M. N., Justice of the Peace.

[No. 454.]

Undertaking to stay execution on appeal from judgment, directing the sale or delivery of property.

(Title of action.)

The above named defendant having appealed from a judgment entered in the supreme court on the sixth day of February, 1852, directing the sale (or delivery of the possession) to the said plaintiff, of certain real (or personal) property, described as follows: (here insert the description so as to identify the property,) and for the sum of five hundred dollars for withholding the possession thereof and one hundred dollars costs and disbursements in this action:

Now we, A. B., C. D. and E. F., merchants of the city of Albany, do undertake that the said appellant will obey the order (of the general term) of the supreme court, (or of the court of appeals) upon the said appeal, and that during the possession of such property by the said appellant, he will not commit or suffer to be committed any waste thereon, or injury thereto, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of the possession thereof, pursuant to the judgment, not exceeding the sum of twelve hundred dollars, and will in addition pay all costs and damages which may be awarded against him, on said appeal, not exceeding the sum of two hundred and fifty dollars. Dated March 8, 1852.

A. B.
C. D.
E. F.

[No. 455.]

Undertaking to stay execution in foreclosure.

(Title of action.)

The above named defendant having appealed from a judgment entered in the supreme court in Rensselaer county, on the seventh day of March, 1852, directing the sale of certain

mortgaged premises described in the said judgment, and for the payment by the said K. L., of any deficiency that may remain upon a sale of said mortgaged premises, and also the sum of fifty dollars, costs and disbursements herein:

Now, we, K. L., M. N. and E. G. undertake, that during the possession of such property by the appellant, he will not commit, or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment, and the deficiency arising upon the sale, if any, that shall remain after the application of the proceeds of the sale thereof, pursuant to the said judgment, not exceeding two thousand dollars, and that the said appellant will also pay all costs and damages which may be awarded against him on the appeal, not exceeding the sum of two hundred and fifty dollars. Dated March 12, 1852.

K. L.
M. N.
E. G.

[No. 456.]

Waiver of undertaking or deposit.

(Title of action.)

The respondent hereby waives the necessity of the appellant's giving an undertaking, or the making of a deposit upon the appeal in this action. Albany, May 10, 1852.

A. R., Att'y for Respondent.

[No. 457.]

Warrant of attachment.

The People of the State of New York, to the Sheriff of the city and county of Albany, greeting:

Whereas, an application has been made to me for a warrant of attachment against the property of E. W., of Wis-

consin, a non-resident, (or who has departed this State, with intent to defraud his creditors, or to avoid the service of a summons,) (or keeps himself concealed within this State, with intent to defraud his creditors, or to avoid the service of a summons,) (or a foreign corporation,) defendant in an action this day commenced in the supreme court, by issuing summons, wherein H. C., is plaintiff, which application is in writing, accompanied by an affidavit verifying the facts and circumstances, to entitle said plaintiff to said warrant of attachment, according to the provisions of chapter four of title seven of the Code of Procedure. It appears by the complaint herein duly verified, (or by the affidavits) that the amount due said plaintiff is the sum of two hundred dollars, and interest thereon from January 1, 1850, besides costs of said action.

Now you are hereby commanded to attach and safely keep all the property of said defendant, E. W., in your county, or so much thereof as may be necessary to satisfy the plaintiff's debt, together with the costs and expenses, as a security for the satisfaction of such judgment, as said plaintiff may recover in said action.

Witness my hand this fourth day of May, 1852.

IRA HARRIS.

[No. 458.]

Warrant to arrest a judgment debtor.

(Title of action.)

The People of the State of New York, to the sheriff of the county of Greene:

An execution having been issued against the property of the above named defendant, to the sheriff of the proper county upon the judgment in this action, and returned wholly (or in part) unsatisfied, and that the said defendant has property which he unjustly refuses to apply towards the satisfaction of the said judgment; and it appearing to me by the affidavits of A. B. and C. D. that there is danger of the said

defendant's absconding, you are hereby required forthwith to arrest the said defendant, and bring him before me to be dealt with according to law.

Witness my hand, this fifth day of May, 1852.

A. J. PARKER.

[No. 459.]

Warrant of commitment for contempt.

The People of the State of New York, to the sheriff of the county of Schenectady, greeting:

Whereas, an order was duly made in our supreme court at the city of Schenectady, on the third day of March, 1852, forbidding and restraining (here set forth the order,) which said order was duly served on the said L. M. Yet, notwithstanding such service, the said L. M., in contempt thereof, has, as we have been informed and given to understand, in our said court committed, (here state the act complained of,) to the great injury of the said R. W.

Now you are hereby commanded forthwith to attach the said L. M., so that you may have his body forthwith before our said court, at the city of Schenectady, to answer unto us for the said contempt, and have you then there this writ.

Witness, Ira Harris, one of the justices of our supreme court, this sixth day of May, 1852.

[L. s.] R. L., Clerk.

A. B., Plaintiff's Att'y.

[No. 460.]

Warrant to apprehend witness for examination de bene esse.

To the sheriff of the city and county of Albany:

You are hereby commanded forthwith to apprehend and take into your custody, A. B., so that you may bring him before me at my chambers in the city of Albany, immediate-

ly, (or on the tenth inst., at ten o'clock in the forenoon,) to be examined as a witness on behalf of one C. D., in an action now pending in the supreme court of this State; in which action said C. D. is plaintiff, and B. P. is defendant, (or in behalf of C. D., who expects to be a party in an action about to be commenced, and in which action the said B. P. is the party expected to be adverse to the said C. D.) And hereof fail not.

Given under my hand this sixth day of April, 1852.

IRA HARRIS.

[No. 461.]

Writ of venditioni exponas.

The People of the State of New York, to the sheriff of the city and county of Albany, greeting:

Whereas, heretofore we issued our writ of execution to you directed, in the words and figures following: (here set out the execution,) and you on the fifteenth day of March, 1852, made your return to the said writ, that you had taken goods and chattels of the said M. N. to the value of five hundred dollars, which said goods and chattels remained unsold for want of buyers:

Therefore we command you that you sell or cause to be sold, the goods and chattels by you taken as aforesaid, and every part thereof, for the best price that can be obtained for the same, or so much thereof as may be sufficient to satisfy the said judgment, and make return of your proceedings herein, within sixty days after the receipt of this writ by you. Albany, April 3, 1852.

M. R., Plaintiff's Att'y.

[No. 462.]

Writ of habeas corpus to inquire into the cause of detention.

The People of the State of New York, to A. B., greeting:

We command you, that you have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by

whatsoever name the said C. D. shall be called or charged, before our justices of our supreme court, (or before Ira Harris, one of the justices of our supreme court, or before A. D., Albany county judge, at his office in the city of Albany,) at the capitol in the city of Albany, on the twenty-eighth day of July instant, at ten o'clock in the forenoon, (or immediately after the receipt of this writ,) to do and to receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

Witness, Ira Harris, Esquire, one of the justices of our supreme court, this twenty-sixth day of July, one thousand eight hundred and fifty-two.

[L. S.] R. L., Clerk.

E. F., Attorney.

Endorsed.

Allowed pursuant to law, July 25, 1852.

IRA HARRIS.

[No. 463.]

Warrant to attach ships and vessels.

By A. B., Albany County Judge:

Whereas, C. D. has by his application in writing, stated to me, that (here set forth the facts as in the application,) and which application was verified by his affidavit, and also the facts and circumstances to establish such demand, have been likewise verified by the affidavits of E. F. and G. H., disinterested witnesses, annexed to such application:

Therefore, pursuant to the Revised Statutes, the sheriff of the city and county of Albany is hereby commanded, in the name of the people of the State of New York, to attach, seize and safely keep such ship or vessel, her tackle, apparel and furniture, to answer all such liens as shall be established against her according to law, and to make return of his proceedings and this warrant to me within ten days after such seizure, together with this warrant.

Given under my hand and seal, at Albany, this tenth day of July, 1852.

A. B., Albany Co. Judge. [L. S.]

[No. 464.]

Application for attachment against ships and vessels.

To the Hon. A. B., Albany county judge:

The application of C. D. respectfully showeth: That a certain debt or demand is justly due to him, for and on account of work done for and towards the building (or repairing and furnishing) of a certain ship called the Tantivy, and which debt or demand amounts, over and above all payments and discounts, to the sum of one hundred dollars, (the items and particulars whereof, are hereto annexed,) and was contracted with the said C. D. by one J. K., the master of said vessel, within this State. And your petitioner annexes to this, his application, the affidavits of E. F. and G. H., two disinterested witnesses, proving the facts and circumstances to establish your petitioner's aforesaid demand.

Wherefore your petitioner prays a warrant against such vessel, pursuant to title 8, of chapter 8, of part 3, of the Revised Statutes, entitled "Of proceedings for the collection of demands against ships and vessels."

And he will ever pray, &c. C. D.

Affidavit annexed.

Albany city and county, ss: C. D., the above named petitioner being sworn, says that the said petition is true in substance and matter of fact.

Sworn, &c. C. D.

(Add affidavits of one or more disinterested witnesses as No. 59.)

[No. 465.]

Sheriff's return with an inventory annexed.

In obedience to the within warrant, I do certify and return to the Hon. A. B., Albany county judge, that I have attached and seized the vessel therein named, together with her tackle, apparel and furniture, and she is now, and ever since has been safely kept by me, as within I am commanded.

W. B., Sheriff.

Inventory annexed.

A just and true inventory made and signed by me, of all the property seized by virtue of the annexed warrant, that is to say: One vessel, called, &c., with the following tackle, apparel, and furniture, viz: (set forth a full list of all the things attached.

W. B., Sheriff.

[No. 466.]

Order of the judge thereupon for publication.

In the matter of the ship Tantivy, attached under a warrant.

Ordered, that notice be published in the Albany Evening Atlas, for the space of three months successively, stating the issuing of the warrant herein, the name of the vessel seized, the port or place to which she belongs, and her last commander, and requiring all persons who claim to have any demands against the said vessel, her tackle, apparel or furniture, under the provision of the Revised Statutes, to deliver an account of their respective claims to me, within three months from the first publication of the said notice, or that their remedy against the said vessel will be forfeited, and that such vessel will be sold for the payment of the claims against her, unless the owner, consignee, or commander thereof, or some person interested therein, appear and discharge such warrant according to law, within three months from the first publication of such notice.

Albany, May 5, 1852.

A. B., Albany County Judge.

[No. 467.]

Application to discharge the warrant against the vessel.

To the Hon. A. B., Albany County Judge:

The undersigned hereby applies to your honor to discharge the vessel, called the Tantivy, from a warrant issed by your

honor, pursuant to the provisions of the Revised Statutes, he being interested in the said vessel as part owner (or consignee or commander,) and he hereby executes and delivers to your honor the bond required by law.

L. M.

[No. 468.]

Judge's order discharging warrant.

To W. B., Esq., sheriff of the city and county of Albany:

A bond having been given, pursuant to the Revised Statutes, I do therefore hereby discharge the warrant heretofore issued by me and directed to you against the ship Tantivy.

Given under my hand and seal this 12th day of June, 1852.

A. B., Albany Co. Judge. [L. S.]

[No. 469.]

Order to sell vessel where the warrant has not been discharged.

In the matter of the ship Tantivy, heretofore seized on my warrant by the sheriff of the city and county of Albany:

Ordered, that the sheriff of Albany proceed to sell the said ship Tantivy, her tackle, apparel and furniture, and I hereby declare and state that the amount necessary to be raised to satisfy the claims against such vessel, and the expenses, is the sum of five hundred dollars.

Given under my hand and seal this 10th day of July, 1852.

A. B., Albany
County Judge. [L. S.]

[No. 470.]

Order for publication of notice to creditors.

In the matter, &c.

Ordered, that a notice be published for three weeks, once each week, in the Albany Evening Atlas, requiring all persons who have exhibited any claims against the said vessel, and the owners, agent, consignee thereof, and all other persons interested in such vessel, to appear before me at my office in the city of Albany, on the 15th of August inst., to attend a distribution of the proceeds arising from the sale of such vessel, her tackle, apparel and furniture.

Dated July 16, 1852. A. B., Albany County Judge.

[No. 471.]

Order to refer a claim objected to.

In the matter, &c.

Ordered, that the claim of B. M., and the written statement accompanying the same, be referred to A. D., J. N and W. G., to examine and report thereon.

Dated, &c. A. B., Albany County Judge.

[No. 472.]

Report of the referees.

In the matter, &c.

We, the referees, appointed by his Hon. A. B., Albany county Judge, to examine and report on a claim and written statement of B. M., do certify and report that we have examined the same, and there is due the said B. M. the sum of sixty-five dollars, (or that there is nothing due the said B. M.) Dated, &c.

A. D.
O. N.
W. G.

PROCEEDINGS FOR PARTITION ON THE APPLICATION OF INFANTS—UNDER SESSION LAWS OF 1852, CHAP. 277.

[No. 473.]

Petition for the appointment of next friend, and for partition of infants' estate.

STATE OF NEW YORK.

In Supreme Court. }
County of Albany. }

The petition of R. C. and P. W., respectfully show to this court, as follows: The said R. C. shows that he resides in the city of Albany, in said county; that on the seventh day of October, 1851, he was duly appointed by the surrogate of Albany county, (or by this court,) and now is a general guardian of P. W., now aged fifteen years, J. W., aged twelve years, H. W., aged ten years, infants, children and heirs at law of A. W., late of Albany, deceased, all of whom then, and still reside in said city. And said P. W. shows that he is an infant, over the age of fourteen years, to wit: of the age of fifteen years, that he resides in the city of Albany, is a son and heir at law of said A. W., deceased.

Your petitioners, the said R. C., as guardian as aforesaid, and said P. W. for himself, further show, that said infants are not, nor is either of them the owner of, or entitled to any personal estate, except in about five hundred dollars, proceeds of sale of property in one of the administrator's hands, as appears by his final accounting with the surrogate, of which said sum each of said infants is entitled to one-twelfth part; that each has a vested interest or remainder of one-eighth part of three thousand dollars, money set apart and ordered invested by the surrogate of Albany county, and the interest thereof paid over to L. W., mother of said infants, during her life, for dower in certain real estate of A. W., said infants' father; which said real estate was sold by the administrator under an order of the surrogate's court for debts; said widow is still living, and about fifty years of age.

These petitioners, said R. C. as guardian as aforesaid, and said P. W. for himself, show, that said infants have not, and are not entitled to any other real estate than such as is hereinafter mentioned: the whole value of all said infants' interest therein cannot, according to information and belief, exceed the sum of six thousand dollars.

And your petitioners further show, that said infants are each possessed of and entitled to an undivided eighth part as tenants in common with B. W., C. W., M. wife of E. S., S. wife of C. J. and H. W., children of said A. W., and half brothers and half sisters of these infants, each of whom is also entitled to the same interest as each of these infants, subject to the said mother's dower right, in and to all and singular the lots, pieces and parcels of land hereinafter described.

The net annual income of the whole of said lots and parcels of land being about eight hundred dollars, as your petitioners are informed and believe, and that each of said infants' share of the annual income is one-twelfth part thereof.

And your petitioners further show, that said widow resides in Albany, and is willing and desires, as they are informed and believe, to have her dower assigned or the property sold, whichever the court shall deem most for the interest of parties concerned. All of said parties, tenants in common with these infants, who reside in this State are of full age.

And your petitioners further show, that said B. W. assumes to control, manage and collect the rents of all said property, except one house and lot, which is not satisfactory to your petitioners, nor as your petitioners believe for the interest of said infants; and as most unhappy differences exists between said B. W. and some of the parties in interest, which is also to the prejudice of the rights of said infants as the property now is.

And your petitioners further show, that each of the following described lots is improved by having thereon wooden dwellings and structures, all placed on wood or posts, and

must soon be subject to expensive repairs, which cannot be conducted in behalf of said infants to advantage, or with economy, and that the interest of said infants requires a partition or sale thereof; and said property is so situated that actual partition cannot be made without great prejudice to the owners, and therefore their interests require a sale thereof.

Your petitioners therefore pray this court to authorise proceedings to be instituted by action or otherwise, on behalf of said infants, for a division and partition of said real estate, and for a sale thereof, if it shall appear that such partition cannot be made without great prejudice to the owners, and pray the appointment of a competent next friend to conduct the proceedings on the part of said infants, and propose as such next friend, H. R., of Albany, who has no interest adverse to said infants, an uncle of said infants by marriage, and E. W., and R. Q., of Albany, as his security.

The said property of which partition is sought, is bounded and described as follows, viz: (here set forth the property.)

R. C.
P. W.

Signed in presence of }
A. G. }

Albany city and county, ss: R. C., one of the above petitioners being sworn, says: he has read the foregoing petition, and knows the contents thereof, that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

Sworn, &c. R. C.

Albany city and county, ss: On this 5th day of June, 1852, before me personally came the above named A. G., to me personally known to be the witness above named, who being by me sworn, did say that he resides in said city, and that on the third instant he saw said P. W., to him personally known to be the person described in the foregoing petition, sign the same.

N. B., Commissioner of Deeds.

[No. 474.]

Consent of next friend.

I hereby consent to become next friend of said infants, and to appear for them in the before mentioned proceedings.

Albany, June 3, 1852.

H. R.

Albany City and County, ss: On this third day of June, 1852, before me, appeared said H. R., to me personally known, and acknowledged the execution of the foregoing consent.

N. B., Commissioner of Deeds.

[No. 475.]

Order appointing next friend, and for leave to institute procedings.

At a special term of the supreme court held for the State of New York, at the City Hall, in the city of Albany, on the 6th day of June, 1852.

Present, Hon. IRA HARRIS, Justice.

In the matter of the application of P. W., J. W. and H. W., infants, for leave to institute proceedings for partition and for appointment of next friend.

On reading and filing the petition of P. W. and R. C., general guardians of said infants, and on motion of O. B., of counsel, ordered that proceedings may be instituted on behalf of said infants, P. W., J. W. and H. W., for a division and partition of the real estate in said petition described, and for a sale thereof, if it shall appear that such partition cannot be made without great prejudice to the owners. And it is further ordered, that H. R. be, and he is hereby appointed next friend of said infants, to appear and conduct the proceedings, upon his giving the requisite security in the sum of two thousand dollars, to be approved by one of the justices of this court.

[No. 476.]

Bond of next friend of infants in partition.

Know all men by these presents, that we, H. R., E. W. and R. Q., all merchants of the city of Albany, are held and firmly bound unto the people of the State of New York in the penal sum of two thousand dollars, for which payment well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 6th day of June, 1852.

Whereas, by an order of the supreme court made on the sixth day of June, 1852, at Albany, said H. R., upon giving the requisite security, was appointed next friend of P. W., J. W. and H. W., infants, all of the city of Albany, to conduct proceedings on the part of said infants, to be instituted on their behalf for a division and partition of the real estate mentioned in the petition, upon which said order was founded, or for a sale thereof, if it should appear that such partition cannot be made without great prejudice to the owners.

Now, therefore, the conditions of this obligation is such, that if the said H. R. shall faithfully discharge the duties of his trust as such next friend and render a just and true account thereof when lawfully required, then this obligation to be void, otherwise to remain in full force and virtue.

H. R. [L. S.]
E. W. [L. S.]
R. Q. [L. S.]

(Add acknowledgement and justification of sureties.)

[No. 477.]

Approval endorsed.

I approve of the within bond as to the form and manner of execution, and as to the sufficiency of the sureties.

June 7, 1852.

IRA HARRIS.

[No. 478.]

Complaint of infants in partition.

SUPREME COURT—County of Albany:

P. W., J. W., and H. W., by H. R., their next friend,
agt.
M. W., widow of A. W., deceased, C. W., B. W., and D. his wife, E. S., and M. his wife, C. J., and S. his wife, H. W., B. P., H. C. and B. M.

These plaintiffs, by H. R., their next friend, duly appointed by order of the court, for that purpose first had and obtained in pursuance of the statute, complain and state, that on or about the eighth day of October, one thousand eight hundred and forty-eight, A. W., a citizen and resident of the city of Albany, died intestate, seized in fee simple absolute of all the real estate hereinafter described, of which partition or sale is hereby sought. That letters of administration upon said intestate's estate, as they are informed and believe, issued on or about the 14th day of November, 1848, by the surrogate of Albany county, to said defendants M. W. and B. W., who took upon themselves the duties thereof, and have rendered their final accounts; the said M. not having received any money as executrix, and said B. showing a balance on hand, after paying expenses, &c., of about five hundred dollars.

The plaintiffs further show, that they are children and heirs at law of said A. W., deceased, are all infants under the age of twenty-one years, to wit: said P. W. of the age of fifteen years and ten months, said J. W. of the age of twelve years, and said H. W. of the age of ten years, all of whom reside in the city of Albany, and said R. C. is their general guardian appointed by the surrogate of the county of Albany.

And these plaintiffs further state, that they are not nor is either of them to their knowledge or belief, the owner of or

entitled to any personal estate except in about $500, proceeds of sale of property of said intestate, and now in the hands of said administrator B. W., of which said sum each of these infants is entitled to one-twelfth part thereof; that each has a vested interest or remainder in one-eighth part of $3000, money which was set apart by the surrogate of Albany county, the interest thereof to be paid over to said M. W., widow of said A. W., deceased, and mother of these plaintiffs, during her life, for dower in certain real estate of said A. W. deceased, said infants' father; which said real estate was sold by the administrators, under an order of the surrogate's court, for the payment of debts; said widow is still living and about fifty years of age; said B. H. C. M. and S., children and heirs at law of A. W., are each in like manner entitled to one eighth part of said $3000.

These plaintiffs further say, according to their best knowledge, information and belief, that neither they or either of them, have or is entitled to any other real estate than such as is hereinafter mentioned; that the whole value of said infants' interest therein, can not exceed the sum of $6,000 or $6,500; and that each of these infants is entitled to an undivided eighth part, as tenants in common with B. W., H. W., C. W., M. W. wife of E. S., and S. W. wife of C. J., children and heirs at law of said A. W., and half brothers and half sisters of these plaintiffs, each of whom is also entitled to the same interest therein, (the married women subject to the husband's rights,) as each of these plaintiffs; all subject to M. W.'s dower right therein, as widow of said A. W.; said B. W. is married to D. H. The net annual income of said real estate does not exceed about $800, as plaintiffs are informed and believe, and that each of said infants' share of said income is one twelfth part thereof.

These plaintiffs further state, that they have been unable to procure the consent of either of the above named tenants in common, who are defendants to be made plaintiffs in this action.

And these plaintiffs further state, that it will be difficult and impracticable to make a fair and equitable partition and

division of the said lands and premises among the several owners, without prejudice to the owners; the said lands and real estate consisting of houses and lots of which equal partition according to the rights and interest of the several parties can not be made.

And these plaintiffs further state, that a sale of the said lands and real estate, and a distribution of the proceeds thereof among the said parties, plaintiffs and defendants, according to their respective rights and interests therein, will be most beneficial to the interests of all the parties interested therein, for the following among other reasons, to wit: each of said lots of which partition or sale is hereby sought, has thereon a wooden dwelling and structures, all placed on wood or posts, and must soon be subject to expensive repairs, which can not be conducted in behalf of infants to advantage or with economy. These plaintiffs therefore pray for a sale of said lands and real estate, under the direction of this court; and a distribution of the proceeds thereof, among the several persons named in this complaint, according to their rights and interests therein. But in case the court shall be of opinion that the interests of these plaintiffs does not require a sale, then they pray that partition may be made according to rights of the respective parties; and these plaintiffs further say that said B. W. controls and leases, and collects the rents of all said real estate except one house and lot, which owing to an unhappy state of feeling existing between him and some of the other parties in interest, and as plaintiffs are informed and believe, in consequence also of expensive and unnecessary repairs made by said B. W., renders it for the interest of these plaintiffs and proper that a receiver should be appointed to take charge of said real estate and the rents and profits, during the pending of this action, subject to the order of the court.

Said real estate of which partition or sale is sought by this action is described as follows: (here insert description of the property.)

These plaintiffs further state, that B. P., H. C. and B. M. claim some interest in some portion of said premises as

tenants from year to year, but that none of them have any interest extending beyond the current year, ending May 1, 1853.

B. A., Plaintiff's Att'y, Albany.

Albany City, ss: H. R., being sworn, says he is the person named in the foregoing complaint as the next friend of said infant plaintiffs; that he has heard said complaint read, and knows the contents to be true, except as to the matters and things therein stated on information and belief, and as to those matters he believes it to be true.

Sworn, &c. H. R.

PROCEEDINGS FOR SALE OF REAL ESTATE OF INFANTS.

[No. 479.]

Petition for order to sell real estate of infants.

STATE OF NEW YORK. }
IN SUPREME COURT. }

The petition of A. B., of the county of Albany, an infant, over the age of fourteen years, who has no general guardian; and of C. D. an infant under the age of fourteen years, who has no general guardian, by E. F., his mother, and next friend, respectfully show:

That your petitioner, A. B., is an infant of the age of twenty years and upwards, and the said C. D. is an infant of the age of ten years, and that the said infants are two of the children and heirs at law of R. P., late of the city of Albany, deceased; and that as such heirs at law they are each entitled to an undivided third part, subject to the right of dower of the said E. F., their mother, of a lot of land, situated in (here describe the premises to be sold) that said lot is worth about one thousand dollars, as they are informed and believe, but is entirely unproductive, being wild and uncultivated, and unimproved. That the brother of your petitioners owns the remaining one-third of the said real estate above mentioned, subject to the dower right aforesaid.

And your petitioners, the said infants, further show, that they do not own any other real estate than that above described, and that they have no personal estate of any kind, or to any amount whatever, except their necessary wearing apparel.

And your petitioner, the said E. F., the mother of the said infants, further shows, that as the widow of the said R. P., deceased, the father of the said infants, she is entitled to dower in the said real estate mentioned, and that she has no means of support for herself and her said infants, except what she and they may acquire by their own industry; and that it is necessary the said premises, or some part thereof, should be sold, and the proceeds, or some part thereof, be applied towards the necessary education and maintenance of the said infants; and your petitioner, the said E. F., hereby offers to unite in the sale of the premises aforesaid, and to release her right of dower therein, upon condition that one-third part of the purchase money be safely invested, and the annual interest thereof be paid to her during her natural life; or that a gross sum be paid to her in lieu thereof, equal in value to her life estate therein, to be ascertained upon the principle of life annuities.

Your petitioners therefore pray, that the said real estate may be sold by and under the direction of this court; and that E. W., of the city of Albany, merchant, who is in no way related to said infants, may be appointed their special guardian, for the purpose of selling the interests of said infants in the said real estate, and L. M. and N. P. are proposed as sureties for the said E. W., as such special guardian, to join with him in a bond in such penalty, and upon such condition as shall be requisite.

A. B.
C. D.
E. F.

(Add affidavit of petitioners, consent of guardian, and proof of guardian's signature to such consent.)

[No. 480.]

Affidavit of disinterested person as to value of the estate.

Albany City and County, ss: R. N., of Albany, being sworn, says, he is well acquainted with the situation and value of the property mentioned and described in the foregoing petition, and does not consider the said premises worth, to exceed in value the sum of one thousand dollars.

Sworn, &c. R. N.

[No. 481.]

Order appointing a special guardian on sale of infant's estate.

At a special term, &c.

In the matter of the petition of A. B., C. D. and E. F., for the sale of the Infant's estate.

On reading and filing the petition of A. B., an infant over the age of fourteen years, who has no general guardian, and of C. D., an infant under the age of fourteen years, and who has no general guardian, by C. D. his mother and next friend, praying for the sale, under the direction of this court, of certain real estate described in the said petition as follows: (here set out the description as in the petition,) and for the appointment of E. W. as special guardian for the purpose of conducting the said sale; and on receiving the consent of the said E. W. of the city of Albany, consenting to be appointed the special guardian of said infants, for the purpose mentioned in the said petition:

It is therefore ordered, that said E. W. be and hereby is appointed special guardian of said infants for the purpose of such sale, upon his executing and filing with the clerk of the county of Albany the requisite security to each of said infants, in the penal sum of five hundred dollars each, conditioned for the faithful performance of the trust reposed in said guardian, and for paying over and investing and accounting for all moneys that shall be received by him,

according to the order of any court having authority to give directions in the premises, and to observe the orders and directions of this court in relation to the said trust; such security, as to the sureties and the form and sufficiency thereof, to be approved by one of the justices of this court. And it is further ordered, that before executing any deed or conveyance of the said premises, the said guardian report to this court the terms and conditions of the agreement made by him for the sale of such premises, with leave to said guardian to move for such further order in the premises as may be proper.

[No. 482.]

Bond of guardian on sale of infant's estate.

Know all men by these presents that we E. W., L. M. and N. P., all merchants of the city of Albany, are held and firmly bound unto A. B., an infant under the age of twenty-one years, in the just and full sum of five hundred dollars, to be paid to the said A. B., his heirs, executors or assigns, for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators jointly and severally, firmly by these presents. Sealed with our seals and dated this fifth day of June, 1852.

Whereas, the above bounden E. W., by an order of the supreme court, held before Hon. Ira Harris, justice, at a special term of said court, held at the city hall in the city of Albany, on the 4th day of June, 1852, was appointed special guardian of said A. B., for the sale of certain real estate of said A. B., in the said order mentioned and described.

Now therefore, the condition of this obligation is such, that if the above bounden E. W. shall faithfully perform the trust reposed in him as such guardian, and for paying over, investing and accounting for all moneys that shall be received by him, according to the order of any court having authority to give directions in the premises, and observe the

orders and directions of the court in relation to said trust, then this obligation to be void, otherwise to remain in full force and virtue.

E. W. [L. S.]
L. M. [L. S.]
N. P. [L. S.]

(Add acknowledgment, justification of sureties, and approval by a justice of the supreme court.)

[No. 483.]

Report of special guardian, of agreement to sell.

SUPREME COURT.

In the matter of A. B., C. D. and E. F., for the sale of certain real estate.

To the justices of the supreme court:

In pursuance of an order of this court, made in the above matter on the fourth day of June, 1852, authorising and empowering me, as the special guardian of the infants therein named, to contract for the sale and conveyance of all the right, title and interest of the said infants in the real estate mentioned and described in the petition of the said infants in this matter, dated the first day of June, 1852, and to report upon oath the terms and conditions of the agreement made by me with the purchaser or purchasers, before executing any deed or conveyance of the said premises:

I, the said special guardian do certify and report, that I have entered into an agreement, subject to the approbation of the court, with G. H., of the town of Watervliet, for the sale of all the right, title and interest of the said petitioners to the said real estate, upon the following terms and conditions: the said G. H. to pay therefor the sum of one thousand dollars in cash, on the executing and delivery to him of the deeds of the special guardian duly appointed for that purpose.

And I do further certify and report, that the said E. F., widow as aforesaid, prefers a gross sum in satisfaction of

her dower right in the said premises; that the gross value of the right of dower of the said E. F. in the said premises, is $, and the costs of these proceedings amount to $25; after deducting which sums from the amount of the purchase money as aforesaid, there will remain the sum of $ due to the said infants collectively.

And I further report, that the above are the best terms upon which I could sell the said premises.

All of which is respectfully submitted.

E. W.

Albany City and County, ss: E. W., the special guardian named in the above report, being duly sworn, deposes and says, that he has read the above report, by him subscribed, and knows the contents thereof, and that the matters therein stated are true.

Sworn, &c. E. W.

[No. 484.]

Order confirming sale.

At a specical term, &c.

(Title.)

On reading and filing the report of E. W., the special guardian of the above named infants, made in pursuance of an order of this court, dated the 4th day of June, 1852, stating that in pursuance of said order he had entered into an agreement, subject to the approval of this court, with G. H. for the sale of all the right, title and interest of the said infants in and to the real estate mentioned in said order, upon the terms and conditions specified in the said report:

On motion of M. S., of counsel for said petitioners, it is ordered, that the said report and the agreement therein mentioned be and the same are hereby ratified and confirmed. And it is further ordered that the said special guardian do execute, acknowledge and deliver to the said G. H., a good and sufficient conveyance of all the estate, right, title and interest of the said infants in and to the premises aforesaid,

upon his complying with the terms and conditions upon which, by the said agreement, the deed was to be delivered, and that so much of the proceeds of said sale as shall be requisite, the said special guardian do pay the sum of $—— to E. F., for her dower right in the shares of the said infants in the premises, and take her receipt in full discharge thereof; and that he pay to the attorney for the petitioners the costs of these proceedings, and that the residue thereof be invested on bond and mortgage for the benefit of the said infants; and that the said special guardian do make a return to the court in writing and upon oath, of the investment and disposition of such residue of the proceeds as soon as may be.

[No. 485.]

Deed by special guardian.

This indenture, made the first day of August, 1852, between E. W., the special guardian of A. B. and C. D., infants, under the age of twenty-one years, of the first part, and G. H., of the second part, witnesseth:

Whereas, a petition was heretofore presented to the justices of the supreme court by the said A. B., who is an infant, over the age of fourteen years, and having no general guardian, and by E. F., the mother and next friend of the said C. D., who is an infant under the age of fourteen years, and having no general guardian, on his behalf, praying for a sale of the right, title and interest of the said infants in the real estate therein mentioned; and whereas, such proceedings were afterwards had in the said court upon the said petition, that by an order of said court made on the fourth day of June, 1852, the said E. W., was appointed the special guardian of the said infants for the purposes of the said application, upon his giving the security therein required; and whereas, such security duly approved and acknowledged, was subsequently filed by the said guardian in the proper office; and whereas, by the said order the said E.

W., upon filing the said security, was authorized and empowered to contract for the sale and conveyance of the right, title and interest of the said infants in such real estate, subject to the ratification of this court. And whereas, the said special guardian afterwards made his report, dated the fifth day of July, 1852, to the said court, stating that he had entered into an agreement, subject to the approbation of the said court, with G. H., for the sale of all the right, title and interest of the said infants in and to the said real estate, upon the terms and conditions therein mentioned; whereas, by another order of the said court, made on the sixth day of July, 1852, it was ordered, that the said report of such special guardian, and the agreement therein mentioned, be, and the same were thereby ratified and confirmed; and, whereas, it was further ordered by the said court, in and by the last mentioned order, that the said special guardian should execute, acknowledge and deliver to the said G. H. a good and sufficient conveyance of all the estate, right, title and interest of the said infants in and to the said premises, upon his complying with the terms and conditions, upon which by the said agreement, such deed was to be delivered. And whereas, the said G. H., the purchaser aforesaid, has complied with the terms and conditions of the said agreement:

Now, therefore, this indenture witnesseth, that the said party of the first part, special guardian as aforesaid, by virtue of the power and authority conferred upon him by the several orders above mentioned, and in pursuance of the statute in such case made and provided, for and in consideration of the sum of one thousand dollars, to him in hand paid, at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the right, title and interest of the said infants in, and to all that certain (here insert description.)

To have and to hold the said premises, and every part and parcel thereof, with the appurtenances, to the said G. H., his heirs and assigns, to his and their only proper use, benefit and behoof, forever.

In witness whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written. E. W. [L. S.]

[No. 486.]

Guardian's report of the investment and disposition of proceeds of sale.

(Title.)

To the justices of the supreme court:

I, E. W., the special guardian of the above infants, having been required by an order of this court, made on the sixth day of July, 1852, to invest on bond and mortgage for the benefit of the said infants, the residue of the proceeds of sale of the real estate of the said infants, which should remain after paying the expenses of such sale, together with the costs of the proceedings and the gross sum to be paid to the said E. F., in satisfaction for her right of dower in the said premises, and to make a return to the court in writing and upon oath of the investment and disposition of such residue of the proceeds—do respectfully report:

That the residue of the said proceeds, after paying thereout the sums directed by such order to be paid by me, amounted to the sum of $ which I have invested at an interest of seven per cent. per annum, payable semi-annually, on good security, by bond and mortgage, to wit: the bond of C. L. of the city of Albany, and a mortgage executed and acknowledged by him and his wife to the said infants upon unincumbered real estate in the city of Albany, worth double the value of such proceeds; which mortgage I have caused to be recorded in the office of the clerk of the county of Albany. All which is respectfully submitted.

Albany, August 7, 1852.

E. W.

(Add the usual jurat.)

PROCEEDINGS IN FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

[No. 487.]

Foreclosure of Mortgage by advertisement and sale.—Notice of sale.

Mortgage Sale.—By virtue of a mortgage, bearing date January 1, 1845, W. C. and E. his wife, of the city of Albany, conveyed to B. A. of said city, certain premises described in said indenture as follows: (insert description of premises.) Said mortgage with the power of sale therein contained was recorded in the clerk's office of the city and county of Albany, the 17th day of February, A. D. 1845, at 10 o'clock, A. M., in book of mortgages No. 78, on page 600, &c. The amount due on said mortgage at the time of the first publication of this notice is four hundred and fifty dollars. Now therefore, notice is hereby given that said mortgaged premises will be sold at public auction to the highest bidder, on the 10th day of August, 1852, at 12 o'clock, noon, in the rotunda of the merchants' exchange, in the city of Albany. Dated May 24, 1852.

B. A. Mortgagee.

F. H. Attorney.

[No. 488.]

Affidavit of publication—annexed to a copy of the foregoing.

Albany City and County, ss: A. B., of said city, being sworn says, that he is the foreman in the office (or one of the proprietors) of the Albany Evening Atlas, a public newspaper printed and published in the county of Albany, where the premises described in the annexed printed notice of sale, or a part thereof, are situated. Deponent further says, that the notice of the mortgage sale, of which a printed copy is hereunto annexed, was published in said newspaper for twelve weeks successively, at least once in each week.

prior to the time specified in said notice for the sale of said premises; said notice was first so published on the 24th day of May, 1852, and continued for twelve weeks at least, successively, at least once in each week, and last so published on the 9th day of August, 1852.

Sworn, &c. A. B.

[No. 489.]

Proof of posting notice—annexed to the foregoing.

City and County of Albany, ss: C. D., of the city of Albany, being sworn says, that he did on the 24th day of May, 1852, and at least twelve weeks prior to the time specified in the annexed printed notice, for the sale of the mortgaged premises therein described, affix a copy of the annexed printed notice in a conspicuous place, and in a proper and substantial manner, on the outer door of the city hall or building, in the city of Albany, where the county courts are appointed to be held in and for the county of Albany, in which said mortgaged premises are situated, that being the court house or building where the county courts of said county are appointed to be held, nearest to said mortgaged premises.

Sworn, &c. C. D.

[No. 490.]

Proof of service of notices.

Albany City and County, ss: E. F., of said city, being sworn says, that he did, at least twenty-eight days prior to the time specified in the annexed printed notice for the sale of the mortgaged premises therein described, serve upon L. M. a copy of the annexed printed notice, by depositing the same in the post office, properly folded and directed to the said L. M., at Boston, his place of residence, and that at least fourteen days prior to the time specified in the annexed

printed notice of sale of the mortgaged premises therein described, he served personally upon N. P. a like printed notice of sale, by handing the same to and leaving the same with the said N. P., and that at least fourteen days prior to the said specified time of sale, he served a like notice upon R. S., by leaving the same at the dwelling house of the said R. S., in charge of a person of a suitable age.

Sworn, &c. E. F.

[No. 491.]

Proof of sale by the auctioneer.

Albany City and County, ss: G. H., of the city of Albany, in the county of Albany and State of New York, being duly sworn says, that he officiated as auctioneer at the sale of the mortgaged premises described in the annexed printed copy of the notice of sale. Deponent further says, that such sale was made at public auction in the day time, and was conducted fairly and openly in pursuance of such notice. Deponent further says, that such sale took place at twelve o'clock, noon, on the tenth day of August, 1852, at the place mentioned in said printed notice, to wit: the rotunda of the Merchants' Exchange, in the city of Albany, in the county of Albany, where the premises sold (or some part thereof) are situated; that the premises so far as the same consisted of distinct tracts, farms or lots, were sold separately, and no more tracts, farms or lots were sold than were necessary to satisfy the amount claimed to be due on said mortgage in said notice, at the day of the first publication thereof, and interest and costs and expenses allowed by law. Deponent further says, that every part of said premises sold by deponent was fairly struck off and sold to the highest bidder, and that the sum of five hundred dollars was the highest sum bid, and E. W. the highest bidder for and the purchaser of the premises described in said notice of sale.

Sworn, &c. G. H.

[No. 492.]

Costs in foreclosure of mortgage by advertisement.

Statute Foreclosure,
B. N.
ag't
W. C., L. M. and N. P.

Drawing notice of sale, fol. 6, at 25c.; engrossing, at 12½c.,	$2 25
Printer's fees for publication,	16 20
County Clerk's fees for searches,	1 30
Copy notice for printer's affidavit, fol. 6, at 12½c.,	75
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Three copies to serve, at 75c. each; serving, $1 each,	5 25
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PROCEEDINGS FOR THE ADMEASUREMENT OF DOWER.

[No. 493.]

Petition for the appointment of guardian for infant in admeasurement of dower.

To the justices of the supreme court of the State of New York:

The petition of A. B., of the city of Albany, respectfully shows, that she is the widow of C. B., late of said city, deceased, that the said A. B. was lawfully married to the said C. B. in his lifetime, and lived and cohabited with him until the time of his death, which was on the 5th day of May, 1852. That the said C. B., during such marriage and cohabitation, was seized of an estate of inheritance, of and in the following lands, tenements and hereditaments situate in said city, (here describe the premises.) And your petitioner further shows, that E. F. an infant under the age of fourteen years, to wit, of the age of twelve years, son and heir at law of the said C. B., deceased, claims to be among the owners thereof as one of the heirs at law of the said C. B. deceased.

Your petitioner therefore prays this court that some suitable person may be appointed guardian of the said infant, to take charge of the rights and interests of the said infant in the premises, in order that your petitioner may at once proceed in this court and obtain the admeasurement of her dower in the said premises.

A. B.

(Add the usual jurat to the petition.)

[No. 494.]

Order appointing guardian.

At a special term, &c.

In the matter of the application of A. B., for admeasurement of dower.

On reading and filing the petition of A. B., widow of C. B., deceased, alleging that the said petitioner is about to make application to this court, for the admeasurement of her dower in certain lands and tenements in the city of Albany, as the widow of the said deceased, and that E. F., an heir of the said deceased, is a minor under the age of fourteen years, and praying that a guardian may be appointed for him by this court, pursuant to the Revised Statutes of this State in such case made and provided; and on motion of L. M., attorney for the said petitioner, it is hereby ordered, that N. P., a freeholder of said city, be and he is hereby appointed guardian of the said E. F., minor aforesaid, for the sole purpose of appearing for and taking care of the interest of the said minor in the premises.

[No. 495.]

Petition for the admeasurement of dower.

To the justices of the supreme court of the State of New York:

The petition of A. B., of the city of Albany, respectfully shows, that she is the widow of C. B., late of said city, deceased; that the said A. B., was lawfully married to the said C. B. in his life time, and lived and cohabited with him in his life time until the time of his death, which was on the fifth day of May, 1852. That the said C. B., during such marriage and cohabition, was seized of an estate of inheritance of and in the following lands, situate in said city; and that E. F. an infant child, son and heir at law of the said C. B., and G. H., claim to be among the owners thereof, as

the heirs at law of the said C. B. Said premises are bounded and described as follows, viz: (insert description of the premises.) Your petitioner therefore prays for an order that admeasurement of dower may be made in the lands and premises above described, and that three reputable and disinterested freeholders may be appointed commissioners for the purpose of making admeasurement, pursuant to the Revised Statutes of this State in such case made and provided.

A. B.

(Annex the usual affidavit to the petition.)

[No. 496.]

Notice to the heirs and others who claim a freehold in the lands sought to be admeasured.

To the heirs of C. B., late of the city of Albany, deceased, and such other persons who claim a freehold estate in the lands described in the petition hereunto annexed:

Take notice, that a petition, of which the annexed is a copy, will be presented to the supreme court, at the next special term thereof, to be held at the city hall in the city of Albany, on the last Tuesday of July next, at the opening of court.

Albany, July 1, 1852.

Yours, &c.,

A. B.

L. M., Attorney.

[No. 497.]

Order for admeasurement and appointing commissioners.

At a special term, &c.

(Title.)

On reading and filing the petition of A. B., widow of C. B., late of the city of Albany, deceased, and the notice accompanying the same, and proof of due service of the said

petition and notice on E. F., and N. P., his guardian, and on G. H., and after hearing counsel for the said petitioner, and the said E. F. and G. H., the facts and allegations set forth in the said petition having been admitted, it is ordered, that admeasurement of the dower of the said widow be made of the lands of the said C. B., her husband, specified in her said petition; and further, that R. S., T. U., and V. W., three reputable and disinterested freeholders be commissioners for the purpose of making such admeasurement.

[No. 498.]

Oath of commissioners.

I do swear that I will honestly and impartially discharge the duty, and execute the trust reposed in me by the within appointment.

Severally sworn, &c.

R. S.
T. U.
V. W.

[No. 499.]

Report of commissioners.

To the justices of the supreme court:

We, the subscribers, R. S., T. U. and V. W. commissioners appointed by order of this court, dated the twenty-seventh day of July, 1852, to admeasure and lay off for the dower of A. B., widow of C. B., deceased, the one-third part of the land and premises hereinafter described, of which the said C. B. was seized during the period of his intermarriage with the said A. B., situated in the city of Albany, now in the possession of E. F. and G. H., heirs of the said deceased, which said appointment is hereunto annexed, do respectfully report, that we, the said commissioners, first having been sworn before legal authority, honestly and impartially to

discharge the duty, and execute the trust reposed in us by the said appointment, did, on the first day of August, 1852, meet at the city of Albany, on the premises hereinafter described, to discharge the duty and exercise the trust aforesaid, and as well the said A. B. as the said E. F. and G. H., by their respective attorneys, appeared at the time and place aforesaid, (or were personally notified to appear at the time and place aforesaid.) Whereupon, we, the said commissioners, caused a survey of the said lands and premises set forth in the petition filed herein and hereafter more particularly described, to be made (in the presence of the said parties,) that is to say, (here describe the premises agreeably to the survey,) a map of which survey is hereunto annexed; and we do further report, that we have admeasured and allotted to the said A. B. for her dower, the one-third part of the said premises, as follows: (here describe particularly the part allotted to the widow as her dower.) We do further report, that the following are the items of the charges attending said admeasurement, (stating the several items.)

Given under our hands, this fourth day of August, 1852.

R. S.
T. U.
V. W.

[No. 500.]

Order confirming commissioners' report.

At a special term, &c.

(Title.)

On reading and filing the report of R. S., T. U. and V. W., commissioners appointed pursuant to the former order of this court, on the petition of A. B., widow of C. B., deceased, situate in the city of Albany, whereof the said deceased was seized of an estate of inheritance, from which report it appears among other things, that after having been sworn before legal authority, faithfully, honestly and impar-

tially to discharge the duty, and execute the trust reposed in them by the said appointment, they did, on the first day of August, 1852, in the presence of the respective attorneys of the said A. B., E. F., and G. H., (or after they had served due notice of their proceedings on the said A. B., E. F. and G. H.) cause a survey to be made of the lands and premises in the said petition and report mentioned, as reference being thereto had will more fully appear, and caused a map thereof to be made; and that they had admeasured and allotted to the said A. B., for her dower, the one-third part of the said lands and premises, which third part so admeasured and allotted will fully appear by the said report this day filed in this court:

Now, on motion of L. M., of counsel for the said petitioner, no one appearing to oppose, (or after hearing B. C., of counsel for the said E. F. and G. H.,) it is ordered that the said report and admeasurement be and the same is in all respects confirmed.

PROCEEDINGS TO COMPEL THE DETERMINATION OF CLAIMS TO REAL PROPERTY IN CERTAIN CASES, UNDER TITLE II, CHAP. V, PART III, OF THE REVISED STATUTES.

[No. 501.]

Notice to compel the determination of claims to real property.

A. B., Esq., Sir: Please to take notice, that I claim title to the following lands, tenements and real estate, and which have been continually for more than three years last past, and still are in my actual possession (or in the actual possession of myself and of those from whom I derive title,) which said lands, tenements and real estate, are bounded and described as follows: (insert description.) And that the estate I have and claim therein is in fee, (or for the life

of myself or the life of C. D., or for a term of years not less than ten) and that I hold the same as the heir (or devisee) of G. H., (or as purchaser from L. M.) who derived his title from (here set forth the chain of title.) And I further give you notice that you unjustly claim title to the said premises, and that unless you appear in the supreme court of the State of New York, within the time, and assert your claim in the manner provided by law, you and all persons claiming under you, will be forever barred from all claim to any estate of inheritance of freehold in possession, reversion or remainder in the premises described in this notice.

Dated May 5, 1852.

N. P.

B. E., Attorney.

[No. 502.]

Proof of service of the foregoing notice.

City and County of Albany, ss: G. S., being sworn says, that on the seventh day of May, 1852, he, this deponent, served on S. Q., at Albany, who was then of full age, not insane, or imprisoned on any criminal charge or conviction, (or if a woman, add "and not being a married woman") a notice signed by N. P., and of which the within is a copy, by then and there delivering the same to the said S. Q., personally.

Sworn, &c. G. S.

[No. 503.]

Order to be entered on serving the above.

(Title.)

On filing a notice from N. P., in accordance with the provisions of title II, chapter V, part III of the Revised Statutes, directed to S. Q., and on filing proof of due service on the said S. Q: Ordered, that the said S. Q. appear and plead thereto within forty days after the entry of this rule (or order.)

[No. 504.]

Order for default entered.

(Title.)

S. Q. not having appeared or pleaded according to an order heretofore entered on behalf of N. P. in the above matter: Ordered, that the default of the said S. Q. be and the same is hereby entered.

[No. 505.]

Judgment roll on default on the foregoing.

(Annex to the original notice and proof of service a certified copy of the order, and proof that no pleading has been received, then the following :)

N. P. *agt.* S. Q. } Judgment, August 5, 1852.

The notice in this proceeding having been served, and the order to plead herein having been entered more than forty days previous to this date, and no (copy,) plea or notice of appearance having been served upon the said N. P., or his attorney herein: Now, on motion of B. E., attorney for the said N. P., it is hereby adjudged that the said S. Q. and all persons claiming under him, by title accruing subsequently to the service of the aforesaid notice, be forever barred from all claim to any estate of inheritance or freehold in the said premises.

[No. 506.]

Plea of disclaimer.

And the said S. Q., by M. C. his attorney, comes and pleads to the notice served upon him by N. P., under the second title, &c., of the Revised Statutes, and says, that the said N. P. ought to be barred from all further proceedings,

of and upon such notice: Because, he says, he disclaims all right, title and claim to any estate of inheritance, or of freehold in the premises described in such notice, which premises are bounded and described as follows: (insert description.)

[No. 507.]

Judgment on plea of disclaimer.

(Title.)

This matter having been brought to a hearing, on the notice, order and plea of disclaimer herein: On motion of B. E., attorney for the said N. P., after hearing M. C., attorney for the said S. Q., it is ordered and adjudged, that a judgment of discontinuance, with costs to the said S. Q. be entered herein; but the said S. Q., and all persons claiming under him by title, accruing subsequently to the service of the notice in this matter, shall be forever barred from all claim to any estate of inheritance or freehold in the said premises.

APPEALS FROM SURROGATES' COURTS.

[No. 508.]

Notice of appeal.

Albany Surrogate's Court.

In the matter of the final accounting of A. B., executor of the last will and testament of C. D., deceased.

A sentence or decree having been entered in the office of the surrogate of the county of Albany, on the tenth day of May, 1852, in the above matter, and the said A. B., executor, &c., (or E. F.) conceiving himself aggrieved by the said

sentence or decree, doth hereby appeal from the same, and every part thereof, (or from the following portion of said decree, state what,) to the supreme court, and prays that the pleadings, proofs and proceedings may be transmitted to the supreme court, to the end that such order may be made thereupon as may be just.

L. M., Att'y for the Appellant.

[No. 509.]

Bond on appeal.

Know all men by these presents, that we, A. B., G. H. and J. K., all of the city of Albany, are held and firmly bound unto E. F. in the sum of one hundred dollars, to be paid to the said E. F., his executors, administrators or assigns. For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 12th day of May, 1852.

Whereas, the above named A. B. has appealed to the supreme court from an order or decree of the surrogate of the county of Albany, made on the tenth day of May, 1852, in the matter of the final accounting of A. B., executor of the last will and testament of C. D., deceased :

Now, therefore, the condition of this obligation is such, that if the said appellant shall diligently prosecute his said appeal, and shall pay all costs that shall be adjudged against him by the supreme court on the said appeal, then this obligation to be void ; otherwise to be and remain in full force and virtue.

A. B. [L. S.]
G. H. [L. S.]
J. K. [L. S.]

[No. 510.]

Petition of appeal from a surrogate.

In Supreme Court.

A. B., executor, &c. of C. D., deceased, appellant.
vs.
E. F., respondent.

To the supreme court of the State of New-York:

The petition of A. B., executor, &c., appellant, respectfully shows:

That heretofore, the above named appellant, was in due form, by the surrogate of the county of Albany, qualified as executor of the last will and testament of C. D., deceased, and letters issued to and were received by your petitioner.

That your petitioner afterwards, upon the application of X. Y., as one of the next of kin (or a creditor) of the said C. D., was cited by said surrogate to account as such executor. Upon which citation, your petitioner desired of said surrogate, as is provided for by the statute, that such account might be finally settled; which was so ordered accordingly. That thereupon an account, duly verified, was rendered to the said surrogate by the said executor; which being unsatisfactory to the said E. F., the respondent herein, as one of the next of kin (or a creditor) of the decedent, the same was controverted by the said respondent, and affirmed to be sufficient (or correct) by your petitioner. An issue being thus formed, the respective parties proceeded before the said surrogate, with evidence written and oral, on the part of the respondent to impeach, and on the part of the appellant to sustain their respective allegations on such accounting.

That after said proof was taken, and a hearing was had upon the matter before such surrogate, a sentence or decree was pronounced by him on the tenth day of May, 1852, by which the appellant was directed to (here set out so much of the order as is claimed to be wrong, and from which the appeal is taken.)

This appellant being advised that the said sentence or decree is erroneous, has appealed therefrom to this court; and states, among other grounds of error therein, the following: First, (here set out the various grounds of error in the decision of the surrogate.)

Your petitioner therefore prays that the said E. F., who is intended to be made a party respondent to this appeal, may be required to answer this petition, and that the proceedings and decree in the above matter in the surrogate's court, may upon this appeal be reviewed by this court, and that the sentence or decree aforesaid, for the errors aforesaid or for other errors, may be reversed, modified, or amended, as may be agreeable to equity.

And your petitioner will ever pray, &c.

Dated May 11, 1852. A. B.

L. M., Attorney for the appellant.

[No. 511.]

Order to answer the petition of appeal.

(Title.)

On reading and filing due proof that the petition of appeal, together with the transcript of the proceedings before the surrogate, have been duly filed in the office of the clerk of this court, and on motion of L. M., Esq., attorney for the appellant: Ordered, that the respondent answer the said petition within twenty days after service of a copy of said petition and notice of this order, or that in default thereof the appellant be heard ex parte.

[No. 512.]

Answer to petition of appeal.

(Title.)

The answer of E. F., respondent, to the petition of appeal of A. B., executor, &c., of C. D., deceased.

This respondent admits that a sentence or decree of the date, tenor and effect in the said petition of appeal set forth,

was made by the surrogate of the county of Albany. And this respondent is advised and believes, and submits that such sentence or decree, so far as the same is complained of by the said petition of appeal, is just and agreeable to equity. And he therefore prays that the said sentence or decree may be affirmed, and that as to those matters the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

E. F.

N. P., Att'y for the Respondent.

[No. 513.]

Transcript of proceedings before the surrogate.

The People of the State of New York, by the grace of God, free and independent, to all to whom these presents may come, or concern: The following are true copies of the proceedings, evidence and decree had in our surrogate's court of the county of Albany, in the matter of the final accounting of A. B., executor, &c., of C. D., deceased:

(Title.)

On the fifth day of February, 1849, letters testamentary in said estate were issued to said A. B., and the said A. B. took upon himself the administration of the effects of the said deceased.

On the second day of April, citation on application of said E. F., issued that said executor render his account, which citation was returnable on the second day of May, 1852.

On the second day of May, 1852, the said executor appeared before the surrogate with L. M., his counsel, and N. P. appeared as counsel for the said E. F. The said executor then and there rendered his final account, of which the following is a portion: (here set out the portion objected to.)

To which said claims (or payment, or report,) the said E. F., by his counsel, objected, and to maintain the issue on his part, presented the following testimony :

R. C., a witness, presented on the part of the said E. F., being sworn, deposed as follows : (here set out the testimony of E. F.)

And the said A. B. to maintain the issue on his part, presented in evidence the following : (here set out the evidence presented by A. B.)

And on the tenth day of May, 1852, a decree was entered in the said matter, of which the following is a copy : (copy decree.)

On the twelfth day of May, a notice of appeal from such sentence or decree was filed in this office, of which the following is a copy : (insert copy of appeal.)

And a bond has been duly filed in this court and approved by such surrogate.

In witness whereof, I have hereunto set my hand and affixed the seal of this court, this thirtieth day [L. S.] of May, one thousand eight hundred and fifty-two.

O. H. C., Surrogate.

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